Duke Energy Carolinas, LLC and Duke Energy Progress, LLC
Keen Direct Exhibit 2

Attachment 1

DEP 2018 Capacity and Energy Market Solicitation, Issued August 27, 2018

Duke Energy Progress Capacity and Energy Market Solicitation

Dated: August 27, 2018
Proposals Due: September 24, 2018

PowerAdvocate Event # 81056

Contents

1.0 Introduction

Duke Energy Progress (DEP) has identified a near term need for approximately 2000 megawatts (MW) of firm dispatchable peaking/intermediate capacity and energy resources resulting from expiring traditional purchase power agreements. To meet this need, DEP is seeking extensions from existing suppliers and new capacity proposals from similar existing unit specific generation facilities or generation systems with firm transmission deliverability into DEP. Successful proposals are expected to be multi-year peaking/intermediate negotiated contracts that meet industry standards for commercial availability and dispatchability requirements.

This solicitation is being released in addition to the Competitive Procurement Renewable Energy (CPRE) RFP which is seeking to secure renewable energy in the DEP and Duke Energy Carolinas service territories. The combination of these two solicitations will meet near term traditional and renewable generation resource needs described in Duke's Integrated Resource Plan.

<u>Proposal Guidelines</u>

- Approximate annual cumulative resource needs:
  - Year 2020/2021 - up to 700 MW
  - Year 2021/2022 - up to 1000 MW
  - Year 2022/2023 - up to 1500 MW
  - Year 2023/2024 - up to 2000 MW
- Annual purchase power agreement (PPA) contract terms begin December 1st and end November 30th of the following year to meet DEP's winter capacity planning needs. The first capacity proposal contract year may begin December 1st, 2020 and end November 30th, 2021.
- Proposals may commence as early as December 1st, 2020 and commence no later than December 1st, 2023. Proposals may include a minimum term of two consecutive years and a maximum term of five consecutive years. The latest contract term can begin December 1st, 2023 and may continue a maximum of five consecutive years ending November 30th, 2028.
- Resources must be fully dispatchable and have the capability to be firmly delivered to the DEP balancing area.
- Proposals can be either firm unit contingent or system firm capacity and must meet Designated Network Resource (DNR) requirements. The respondent must own or control the generation or have committed to a firm purchase power contract in order to designate a resource as a Designated Network Resource. A DNR cannot include resources, or any portion thereof, that are designated as Network Resource for another customer or otherwise cannot be called upon to meet DEP's load on a non-interruptible basis.
- Proposals must have a minimum capacity of at least 75 MW.

DEP will utilize PowerAdvocate to administer this solicitation. PowerAdvocate is a web-based platform that centralizes proposal submissions and ongoing communications with DEP while maintaining confidentiality among all respondents. Information, instructions, and the opportunity to submit questions will be provided within PowerAdvocate. In addition, for more detailed proposal structuring or guidance, respondents may contact Michael Keen via E-mail at Michael.keen@duke-energy.com or office number 727-820-4500 during regular business hours.

Respondents must submit their proposals to PowerAdvocate Event # 81056 on or before, 5:00 pm EST on September 24, 2018.

2.0 General Terms

DEP is requesting up to approximately 2000 MW of firm dispatchable peaking/intermediate capacity and energy beginning in December 1, 2020 to fulfill near term capacity needs as part of its Integrated Resource Plan. DEP is seeking firm dispatchable resources with demonstrated operational characteristics and as such will not accept non-firm, non-dispatchable proposals.

The delivery point for the capacity and energy will be into DEP's balancing area for delivery to DEP's load.

A. Contract Capacity

For dispatchable, traditional peaking/intermediate resources, contract capacity should be stated at summer ambient conditions of 100 degrees F, 40% relative humidity, and 95% lagging power factor. For resources outside the DEP balancing area, the contract capacity should be given at the DEP balancing area delivery point.

B. Quantity, Term, & Delivery Date

DEP's approximate annual capacity need for this solicitation increases up to a cumulative capacity need of approximately 2000 MW as follows:

- Year 2020/2021 - up to 700 MW
- Year 2021/2022 - up to 1000 MW
- Year 2022/2023 - up to 1500 MW
- Year 2023/2024 - up to 2000 MW

Annual PPA contract terms begin December 1st and end November 30th of the following year to meet DEP's winter capacity planning needs. For example, a hypothetical two-year proposal would begin December 1st, 2020 and end November 30th, 2022.

PPA proposal terms may commence for any contract term listed above and may continue for a maximum term of five consecutive years and a minimum term of two consecutive years. The latest proposal term begins December 1st, 2023 and may continue a maximum of five consecutive years ending November 30th, 2028.

Resources must be fully dispatchable and have the capability to be firmly delivered into the DEP balancing area. Proposals can be either unit contingent or system firm capacity. Proposals must have a minimum capacity of at least 75 MW.

C. Capacity and Energy Pricing

Respondent pricing may be comprised of a capacity component on a $/kW-yr basis and an energy component on a $/MWh basis. The energy cost can be a single price encompassing all desired costs on a $/MWh basis or may be stated as separate costs including a start cost ($/start), variable O&M ($/MWh), environmental cost ($/MWh), and fuel cost ($/MMBtu), as applicable. Where applicable, a guaranteed heat rate (Mmbtu/Mwh) should be provided for the conversion of fuel to energy.

Proposals must provide a detailed description of the pricing terms and all appropriate conditions that may impact final delivered capacity and energy prices. During any subsequent discussions and/or negotiations, DEP may request modifications to the proposed contract structure scheme to accommodate its own operational or administrative requirements.

Respondent is responsible for complying with all applicable state and federal environmental regulations and requirements, including SO_2 allowances, NOx allowances and emission fees. Environmental costs should be included in the proposal as well.

Proposed pricing should be considered firm until December 31st, 2018.

D. Fuel Supply

The proposal must indicate the defined contractual fuel pricing point and any applicable local distribution company charges. Fuel supply proposals must be specified as either a tolling arrangement (Duke provides fuel) or as the responsibility of facility owner. Non-tolling fuel supply proposals may include either a fuel index formula or fixed fuel price. For all indexed bids, a fuel pricing formula must be provided with sufficient detail to understand the stated formula components for estimation of the cost of fuel, in $/MMBtu, for the proposal term.

Intermediate capacity gas proposals should include pricing for firm gas supply (firm gas transportation) to the proposed facility delivery point for 100% of the proposed intermediate capacity. All pertinent details on the firm gas supply and transportation arrangements and total costs such as daily transportation volume and any transportation demand rate information necessary for DEP to understand the total cost of firm gas transportation on a monthly and annual basis must be included.

Non-tolling peaking capacity gas proposals should provide proposed gas transportation firmness arrangements to ensure adequate gas supply for peaking dispatch and/or provide alternative fuel back up arrangements.

E. Location

Respondent must provide unit specific generation resource identification and location. System capacity products must ensure system capacity firmness with supporting information on system capacity reserves during the proposed delivery period. Capacity and energy from the generation resources must be able to be firmly delivered into DEP's balancing area for delivery to DEP's load.

F. Transmission

All capacity and energy must be firmly delivered into the DEP balancing area for delivery to DEP's load. For resources located outside the DEP transmission system, respondents must describe the firm transmission arrangements and all costs required to deliver into DEP, as well as discussing the cost and availability of all other transmission provider services involved. Respondents should identify and provide an estimate of the annual transmission related costs for delivery of the capacity based on currently owned transmission paths as well as other required transmission rights using the appropriate tariff rates and all other anticipated transmission costs from all involved transmission providers.

G. Project Data

Operational data from unit specific generating resources should be provided for the most recent three years of past operations including but not limited to capacity factors, heat rate information, permit limitations, any limits on minimum and maximum consecutive run hours, outages, availability, extensive equipment maintenance or modifications, minimum and maximum unit and scheduling capabilities, and other such pertinent information.

3.0 Instructions to Respondents

A. Initial Access

PowerAdvocate will be used for the administration of this solicitation. Information and instructions for respondents will be provided within PowerAdvocate. The response package is housed within PowerAdvocate.

Existing PowerAdvocate Supplier Account:

- Please share your interest in reviewing the Response Package for Event # 81056, DEP Capacity and Energy Market Solicitation 2018 with: DEPSS@duke-energy.com. Your email should include your PowerAdvocate Supplier Account name and related contact name as listed under your Supplier Account.

Register a New PowerAdvocate Supplier Account:

- For respondents that require a new PowerAdvocate Supplier Account, please visit www.PowerAdvocate.com, click on "Registration" link at the top right-hand corner of the screen, and follow the instruction to complete registration as a Supplier for Event #81056, DEP Capacity and Energy Market Solicitation 2018. Following approval as a Supplier by PowerAdvocate, please share your interest in reviewing the Response Package for Event # 81056, with DEPSS@duke-energy.com. Your email should include your PowerAdvocate Supplier Account name and related contact name as listed under your Supplier Account.

Responses to frequently asked questions may be placed within PowerAdvocate under FAQs for the benefit of all respondents, although care will be taken not to identify any specific respondents.

B. Schedule

The solicitation process will include the activities and events as indicated in the schedule shown below. Proposals will be reviewed for completeness and proposals that do not meet the solicitation requirements will be notified and allowed a limited period to cure the identified deficiencies.

Schedule

The schedule outlined below is subject to change based on response. Any changes to schedule will be communicated to all respondents through PowerAdvocate.

Release	August 27, 2018
Proposal Submittal Deadline	September 24, 2018
Contract Execution	First Quarter 2019

DEP reserves the right to extend or otherwise modify any portion of the schedule or terminate the solicitation process at its sole discretion. Respondents will be notified via PowerAdvocate of any schedule changes.

All response packages and any supporting information must be submitted to PowerAdvocate Event # 81056 on or before 5:00 pm EST on September 24, 2018. Proposals received after this date may be considered at the discretion of DEP.

C. Proposal Organization

All proposals must include the following components:

1. Executive Summary

The executive summary should summarize the respondent's qualifications and content of the proposal. Respondent should provide a description of the project, including type and manufacturer of major equipment; identify all owners and energy off takers, project location and fuel arrangements.

2. Proposal Limitations

Please provide reasonable detail on any economic, operational, or system conditions that might affect the respondent's ability to deliver the capacity and energy firmly to the DEP balancing area.

3. Response Package

Respondents are required to complete all questions in the response package provided by DEP to compete in this solicitation process. All respondents must execute the Confidentiality Agreement ("CA") in the form attached.

Attachment A: General Information

Attachment B: Supply Side Term Sheet

Attachment C: Detailed Operating Parameters

Attachment D: Confidentiality Agreement

4.0 Proposal Evaluation and Contract Negotiation

A. Initial Proposal Review

After the proposal submittal deadline, DEP will review all responses for completeness and responsiveness. DEP may request a respondent provide additional information or clarification to their original proposal. DEP will make such requests via PowerAdvocate and specify a deadline for compliance. Failure to provide the requested information or clarification by the deadline may result in disqualification of the proposal. DEP may select any number of proposals for further consideration.

B. Proposal Selection

After the initial proposal review, proposals will be evaluated based on present value economic analysis and the ability of the respondent to perform. Proposal evaluations are geared toward identifying the most cost-effective proposals while also considering respondent operational experience, facility operational flexibility, past facility performance, location, risks of product deliverability, reliability of fuel supply, impact to delivery due to current off take agreements, and ability to reach acceptable contractual agreement with involved parties.

C. Contract Negotiations

DEP may require that certain provisions be included in final purchase power agreements. Such provisions may include, but are not limited to, financial assurance (depending on the financial means and historical performance of Respondent), indemnification, make-whole damages for non-performance, and any other matter deemed necessary, prudent, or desirable by DEP.

DEP will communicate via PowerAdvocate of its interest in commencing contract negotiations. DEP's commencement of, and participation in, negotiations shall not be construed as a commitment to execute a contract. If a contract is negotiated, it will not be effective unless and until it is fully executed. DEP reserves the right at any time, during contract negotiations, at its sole discretion, to terminate or, once terminated, to resume negotiations with a respondent. This solicitation contains general guidelines and requirements for developing and submitting proposals. Nothing herein shall be construed to bind DEP unless and until a contract with a respondent has been successfully negotiated, executed, and is effective. Once effective, the contract will govern the relationship between and responsibilities of the parties. The costs for responding to the solicitation and contract negotiations are the responsibility of the respondent.

5.0 Reservation of Rights

In responding to this solicitation, the respondent agrees and accepts that nothing contained in this solicitation will be construed to require or obligate DEP to select any proposal or limit the ability of DEP to reject all proposals in its sole and exclusive discretion. DEP further reserves the right to modify the schedule, or withdraw and terminate this solicitation at any time prior to the proposal deadline, proposal selection, or at any time prior to execution of a contract.

DEP reserves the right to consider alternatives outside of this solicitation, including, but not limited to, negotiations between DEP and current power suppliers. Nothing in this solicitation will affect or limit DEP's discretion and/or obligation to enter into any agreement with any other entity or to otherwise pursue any other arrangement with any party.

Respondent shall indemnify and hold harmless DEP from any and all liabilities in connection with any proposal submitted. Respondents shall execute DEP's form confidentiality agreement.

All proposals submitted to DEP pursuant to this solicitation shall become the exclusive property of DEP and may be used for any reasonable purpose by DEP. DEP will consider materials provided by respondent to be confidential only to the extent protected by the confidentiality agreement entered into with DEP.

Respondents should be aware that submittals, even if marked "Confidential," may be subject to discovery and disclosure in regulatory or judicial proceedings that may or may not be initiated by DEP. As further set forth in DEP's confidentiality agreement, DEP will be permitted to disclose information in response to such requests or requirements without protective treatment, and DEP will be permitted to disclose information to the regulatory and public staff without protective treatment. DEP will be permitted to provide or produce materials and information without any prior consultation with or approval of the respondent.

Duke Energy Carolinas, LLC and Duke Energy Progress, LLC
Keen Direct Exhibit 2

Attachment 2

Cherokee September 18, 2018 Letter Asserting Intent to Sell to DEC

Duke Energy Carolinas, LLC
Michael Keen
Business Development Manager Renewable Compliance & Origination
FL 155 299 First Avenue North
St. Petersburg, FL 33701
michael.keen@duke-energy.com

Kathy Dunn
Duke Energy - Distributed Energy Technologies
400 South Tryon Street
Mail Code: ST 14A
Charlotte, North Carolina 28202
Kathy.Dunn@duke-energy.com

Duke Energy Carolinas
526 South Church Street
P.O. Box 1006
Charlotte, North Carolina 28201-1006
Attn.: Director, Supply Side Resources
DERContracts@duke-energy.com

Copy to:

David Johnson
ST 14A 400 South Tryon Street
Charlotte, NC 28285
david.johnson@duke-energy.com

Date: September 17, 2018

Re: Notice of Commitment to Sell Output of a Qualifying Facility – Cherokee County Cogeneration Partners, LLC

Greetings:

Cherokee County Cogeneration Partners, LLC ("Cherokee") submits the enclosed executed Notice of Commitment to Sell the Output of a Qualifying Facility ("Notice") with respect to Cherokee's 86 MW cogeneration facility that currently sells its full output to Duke Energy Carolinas, LLC ("DEC"). The facility is a fully operational QF as described in the self-certification of qualifying facility ("QF") status filed with the Federal Energy Regulatory Commission ("FERC") in Docket No. QF94-160-012 (the "Facility"). By submitting this Notice, Cherokee is making a legally binding offer of all capacity and energy associated with the Facility to DEC as of January 1, 2021, the day after expiration of its current Power Sales Agreement between Cherokee and DEC dated June 28, 2012, effective between July 1, 2013 and December 31, 2020 ("Power Sales Agreement").

Consistent with DEC's and Cherokee's prior business practices with respect to the Power Sales Agreement, Cherokee submits this legally binding offer prior to the expiration of its present contract. DEC and Cherokee entered into the Power Sales Contract over a year before expiration of the prior agreement, and began negotiations well before the contract was executed (approximately January of 2012). This practice helps to ensure a smooth transition to the next contract term by providing certainty to both parties with respect to the effective avoided cost rate, and enabling DEC to take the Facility into account in its resource planning and capacity needs. Cherokee looks forward to working with DEC to reach mutually agreeable terms and establish the applicable avoided cost rate for the new contract.

The Notice establishes Cherokee's legally enforceable obligation ("LEO") under the Public Utility Regulatory Policies Act ("PURPA"), FERC's implementing PURPA regulations, and applicable FERC precedent. This Notice is consistent with the approach toward PURPA implementation referenced by FERC with respect to merger of DEC and Duke Energy Progress, LLC ("DEP"), where FERC expressly relied on the representations of the Duke merging parties that both DEP and DEC would each remain subject to their PURPA obligations post-merger. *See* Order on Disposition of Jurisdictional Facilities and Merger, 136 FERC ¶ 61,245 at ¶ 148 (2011).

Pursuant to PURPA and its implementing regulations, Cherokee establishes the avoided cost for its energy and capacity as of today, September 17, 2018, the date that the LEO is incurred. *See* 18 C.F.R. § 292.304(d)(2)(ii) (providing an unqualified right for QFs to establish avoided costs calculated at the time the LEO obligation is incurred). Cherokee provides its Form 556, Negotiated Pricing Template, and a DEC Notice of Commitment form, thereby establishing its LEO for DEC as of today, September 17, 2018 to purchase all of its output made available as of January 1, 2021, the day after the Power Sales Agreement expires. However, if DEC believes it needs additional information for Cherokee to establish the LEO, Cherokee requests that DEC inform Cherokee within five (5) business days.

We look forward to a productive process for negotiating and finalizing a new power purchase agreement for the Facility, which builds on the years of working together under the Power Sales Contract. If you have any questions regarding the enclosed information, please contact me at your convenience.

Sincerely,

____

Name: Carolyne Murff
Title: Senior Vice President
Cherokee County Cogeneration Partners, LLC

<u>Attachments</u>

Cherokee County Cogeneration Partners, LLC FERC Form 556
Negotiated Pricing Template
Notice of Commitment of Cherokee County Cogeneration Partners, LLC

SOUTH CAROLINA NOTICE OF COMMITMENT TO SELL THE OUTPUT OF A QUALIFYING FACILITY TO Duke Energy Carolinas, LLC or Duke Energy Progress, LLC

Instructions to QF: The QF shall deliver, via certified mail, courier, hand delivery or email, its executed Notice of Commitment to:

Duke Energy - Distributed Energy Technologies
400 South Tryon Street
Mail Code: ST 14A
Charlotte, North Carolina 28202
Attn.: Wholesale Renewable Manager
DERContracts@duke-energy.com

Any subsequent notice that a QF may be required to provide to Company pursuant to this Notice of Commitment shall be delivered to the same address by one of the foregoing delivery methods.

1. Cherokee County Cogeneration Partners, LLC ("Seller") hereby commits to sell to Duke Energy Carolinas, LLC or Duke Energy Progress, LLC (the "Company") all of the electrical output of the Seller's qualifying facility (the "Facility").

2. The name, address, and contact information for Seller is:

David J. Marshall
LS Power
1700 Broadway, 35th Floor
New York, NY 10019

Telephone: (212) 547 2808
Email: DMarshall@LSPower.com

3. By execution and submittal of this commitment to sell the output of the Facility (the "Notice of Commitment"), Seller certifies as follows:

<u>Eligibility for Schedule PP</u>
Seller is a qualifying facility ("QF") with a maximum nameplate capacity of 98 MW and is not eligible for the Company's Schedule PP. Seller elects to exercise its rights under PURPA to sell pursuant to a legally enforceable obligation with avoided costs calculated at the time the obligation is incurred.

<u>Application to Interconnect Generator to Company's System</u>

Because Seller is already fully interconnected to Duke Energy Carolinas, LLC, documentation regarding an interconnection request is inapplicable.

<u>FERC Form 556</u>

Seller has attached to this Notice of Commitment Form a copy of its FERC Form 556 or has attested below that the QF is exempted from the self-certification requirement.

☑ Seller attests that it is exempt from FERC QF self-certification requirement

4. By execution and submittal of this Notice of Commitment Seller acknowledges that the legally enforceable obligation date ("LEO Date") for the Facility will be established upon the Company's receipt of a complete copy of this Notice of Commitment Form, which must include a copy of the Seller's FERC Form 556 (unless the Seller is exempt from the self-certification requirement), which shall be based upon (a) the receipted date of deposit of this Notice of Commitment with the U.S. Postal Service for certified mail delivery to the Company, (b) the receipted date of deposit of this Notice of Commitment with a third-party courier (e.g., Federal Express, United Parcel Service) for trackable delivery to the Company, (c) the receipted date of hand delivery of this Notice of Commitment to the Company at the address set forth in paragraph 1, above, or (d) the date on which an electronic copy of this Notice of Commitment is sent via email to the Company if such email is sent during regular business hours (9:00 a.m. to 5:00 p.m.) on a business day (Monday through Friday excluding federal and state holidays). Emails sent after regular business hours or on days that are not business days shall be deemed submitted on the next business day.

5. The LEO Date will be used to determine Seller's eligibility for the rates, terms and conditions of the Company's currently effective Schedule PP.

6. This Notice of Commitment shall automatically terminate and be of no further force and effect upon: (i) execution of a PPA between Seller and Company or, (ii) if such Seller does not execute a PPA, thirty (30) days after Company's delivery of an "executable" PPA to the QF by the Company, that contains all information necessary for execution and which the Company has requested that the QF execute and return.

The undersigned is duly authorized to execute this Notice of Commitment for the Seller:

Carolyne Murff

Senior Vice President

Cherokee County Cogeneration Partners, LLC

17 Sept 2018
[Date]

Duke Energy Carolinas, LLC and Duke Energy Progress, LLC
Keen Direct Exhibit 2

Attachment 3

DEC October 5, 2018 Letter to Cherokee Regarding Commencing Negotiations

DUKE ENERGY.

October 5, 2018

Via Email and Priority Mail

Ms. Carolyne Murff
Senior Vice President
Cherokee County Cogeneration Partners, LLC
1700 Broadway, 35th Floor
New York, NY 10019

Re: Cherokee County Cogeneration Partners, LLC ("Cherokee") letter dated September 17, 2018 (the "September 17 Letter")

Dear Ms. Murff:

Duke Energy Carolinas, LLC ("DEC") acknowledges receipt of the September 17 Letter, which purports to establish a legally enforceable obligation ("LEO") within the meaning of PURPA for Cherokee's existing 86 MW generating facility (the "Facility"). DEC recognizes Cherokee's desire to commence negotiations prior to the termination of the existing power purchase agreement ("PPA") between the parties which expires on December 31, 2020. DEC is prepared to negotiate in good faith towards a new agreement to purchase the full output of the Facility; however, DEC does not agree that the September 17 Letter or the accompanying Notice of Commitment form referenced therein establish a legally enforceable obligation or "LEO" under PURPA. Among other things, the use of the Notice of Commitment form is limited to qualifying facilities of two (2) MW or less that are eligible for DEC's South Carolina Schedule PP standard offer tariff and is therefore not applicable to the Facility.

Notwithstanding the foregoing, subject to the conditions set out in this paragraph, DEC is prepared to commence negotiations with Cherokee for a new PPA that would become effective on or after January 1, 2021. DEC also agrees to provide Cherokee indicative avoided cost pricing based upon DEC's forecasted avoided costs calculated as of September 2018, as requested. Due to the time required for DEC to calculate its avoided cost, this information will not be available until on or about October 31, 2018. At that time, DEC will deliver its avoided costs as well as a form PPA that DEC would agree to execute in order to establish a legally binding arrangement to purchase Cherokee's full output of energy and capacity over a five-year term commencing

January 1, 2021. The avoided cost pricing will remain available for sixty (60) days from the date delivered by DEC to allow a reasonable amount of time for the parties to conclude any needed negotiations regarding the form of PPA. Prior to DEC delivering its avoided cost data and commencing negotiations of a new agreement, as requested by Cherokee, DEC requires the execution of the attached standard form confidentiality agreement. Please respond on or before October 24, 2018, providing the executed confidentiality agreement and DEC will then provide Cherokee with its estimated avoided costs calculated as of September 2018 and a draft PPA.

If DEC does not receive the executed confidentiality agreement on or before October 24, 2018, DEC will take this to mean that Cherokee has decided not to pursue negotiation of a new PPA at this time. If Cherokee subsequently renews its interest in negotiating a new PPA, DEC will provide avoided cost estimates calculated as of that time.

Please feel free to contact me at (727) 820-4500 if you have any questions.

Sincerely,

Michael T. Keen
Duke Energy
Business Development Manager

Attachment

Cc:
David J. Marshall
LS Power
1700 Broadway, 35th Floor
New York, NY 10019

Duke Energy Carolinas, LLC and Duke Energy Progress, LLC
Keen Direct Exhibit 2

Attachment 4

DEC October 31, 2018 Letter
Delivering Avoided Cost Rates and Large QF PPA

From:	/o=exchangelabs/ou=exchange administrative group (fydibohf23spdlt)/cn=recipients/cn=b04989de67834f3d867a87701c176ff2-ot05529 (35
To:	Aaron Pupa (APupa@lspower.com) <APupa@lspower.com>
CC:	David J. Marshall (DMarshall@LSPower.com) <DMarshall@LSPower.com>; Rios Jr., Martin <Martin.Rios@duke-energy.com>; Dunn, Kathy <Kathy.Dunn@duke-energy.com>; Johnson, David B (David.Johnson@duke-energy.com) <David.Johnson@duke-energy.com>; DERContracts <DERContracts@duke-energy.com>
Subject:	Cherokee's Request for DEC's Avoided Costs
Sent:	2018/10/31 19:18:28 (UTC +00:00)
Attachments:	Cherokee Letter 10 31.pdf; image001.wmz

Aaron,

The attached cover letter and draft PPA were sent to Carolyne Murff via priority mail today. Please let me know if you have any questions. Thank you.

Michael Keen
Business Development Manager
Duke Energy
Office 727.820.4500
Mobile 727.424.2665

October 31, 2018

Via Email and Priority Mail

Ms. Carolyne Murff
Senior Vice President
Cherokee County Cogeneration Partners, LLC
1700 Broadway, 35th Floor
New York, NY 10019

Re: Cherokee County Cogeneration Partners, LLC ("Cherokee") - Request for Avoided Costs of Duke Energy Carolinas, LLC ("DEC")

Dear Ms. Murff:

DEC recognizes Cherokee's desire to commence negotiations prior to the termination of the existing power purchase agreement ("PPA") between the parties which expires on December 31, 2020. As requested, DEC's indicative avoided costs as of September, 2018 are specified below.

The rates included below have been calculated using DEC's standard system methodology for Qualifying Facilities based on DEC's September, 2018 system costs. Rates are levelized for the five year term beginning on January 1, 2021. There is no capacity component because DEC does not identify a capacity need in its Integrated Resource Plan ("IRP") until 2028. The pricing is based on the energy being delivered into DEC on a firm basis.

START DATE	January 1, 2021
TERM	5 years
ON-PEAK ENERGY PRICE	\$40.71/MWh
OFF-PEAK ENERGY PRICE	\$33.50/MWh

The summer months on-peak hours are 1:00 pm to 9:00 pm, Monday through Friday. The non-summer months on-peak hours are 6:00 am to 1:00 pm. The summer months are June, July, August and September. All other months are considered to be non-summer months. All hours of the following holidays are considered off-peak: New Year's Day, Good Friday, Memorial Day, Independence Day, Labor Day, Thanksgiving Day and the day after, and Christmas Day.

Also, please find attached a draft Power Purchase Agreement (the "Draft PPA") for your review. If you desire to proceed with this transaction please include the seller's contact information and complete Exhibits 1, 4 and 5. When we receive this information we will prepare an execution copy. The avoided cost pricing included in this letter is available until December 31, 2018. All information included in this letter is considered confidential and protected under the confidentiality agreement executed by both parties on October 11, 2018.

Please feel free to contact me at (727) 820-4500 if you have any questions.

Sincerely,

Michael T. Keen
Duke Energy
Business Development Manager

Attachment

Cc:
David J. Marshall
LS Power
1700 Broadway, 35^{th} Floor
New York, NY 10019

Duke Energy Carolinas, LLC and Duke Energy Progress, LLC
Keen Direct Exhibit 2

Attachment 5

LS Power Unsolicited Offer to Sell Capacity to DEC, Received December 7, 2018

SUMMARY OF MAJOR BUSINESS TERMS AND CONDITIONS FOR

TOLLING AGREEMENT

Contract Quantity	[redacted]
Term	[redacted]
Transaction Overview	[redacted]
Facility	Cherokee County Cogeneration
Contract	[redacted]

	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
2021	[redacted] [redacted] [redacted]	[redacted] [redacted]	[redacted] [redacted]	[redacted] [redacted]	[redacted] [redacted]	[redacted] [redacted]	[redacted]
2022	[redacted] [redacted]	[redacted] [redacted]	[redacted] [redacted]	[redacted] [redacted]	[redacted] [redacted]	[redacted] [redacted]	[redacted]
2023	[redacted] [redacted]	[redacted] [redacted]	[redacted] [redacted]	[redacted] [redacted]	[redacted] [redacted]	[redacted] [redacted]	[redacted]
2024	[redacted] [redacted]	[redacted] [redacted]	[redacted] [redacted]	[redacted] [redacted]	[redacted] [redacted]	[redacted] [redacted]	[redacted]
2025	[redacted] [redacted]	[redacted] [redacted]	[redacted] [redacted]	[redacted] [redacted]	[redacted] [redacted]	[redacted] [redacted]	[redacted]
2026	[redacted] [redacted]	[redacted] [redacted]	[redacted] [redacted]	[redacted] [redacted]	[redacted]	[redacted] [redacted]	[redacted]
2027	[redacted] [redacted]	[redacted] [redacted]	[redacted] [redacted]	[redacted] [redacted]	[redacted]	[redacted] [redacted]	[redacted]

Duke Energy Carolinas, LLC and Duke Energy Progress, LLC
Keen Direct Exhibit 2

Attachment 6

Cherokee December 12, 2018 Letter
Asserting Intent to Sell to DEP

From:	Aaron Pupa <APupa@lspower.com>
To:	DERContracts <DERContracts@duke-energy.com>; Keen, Michael T <Michael.Keen@duke-energy.com>; Dunn, Kathy <Kathy.Dunn@duke-energy.com>; Johnson, David B <David.Johnson@duke-energy.com>
CC:	David J. Marshall <DMarshall@LSPower.com>
Subject:	Cherokee Notice Letter to DEP
Sent:	2018/12/12 23:59:49 (UTC +00:00)
Attachments:	Cherokee County Cogeneration Negotiated Power Template.xlsx; Cherokee LS Power 556.pdf; NC Notice of Committment to Sell - Large QF - Cherokee.pdf; Notice of Commitment to Sell - Cherokee County Cogeneration Partners.pdf

*** Exercise caution. This is an EXTERNAL email. DO NOT open attachments or click links from unknown senders or unexpected email. ***

Please see the attached Notice of Commitment letter and associated attachments to Duke Energy Progress from Cherokee County Cogeneration Partners, LLC.

Please let me know if you have any questions.

Sincerely,

Aaron Pupa
LS Power
apupa@lspower.com
636-534-3271

Duke Energy Carolinas, LLC
Michael Keen
Business Development Manager Renewable Compliance & Origination
FL 155 299 First Avenue North
St. Petersburg, FL 33701
michael.keen@duke-energy.com

Kathy Dunn
Duke Energy - Distributed Energy Technologies
400 South Tryon Street
Mail Code: ST 14A
Charlotte, North Carolina 28202
Kathy.Dunn@duke-energy.com

Date: December 12, 2018

Re: Notice of Commitment to Sell Output of a Qualifying Facility to Duke Energy Progress – Cherokee County Cogeneration Partners, LLC

Greetings:

Cherokee County Cogeneration Partners, LLC ("Cherokee") submits to Duke Energy Progress, LLC ("DEP") the enclosed executed Notice of Commitment to Sell the Output of a Qualifying Facility ("Notice") with respect to Cherokee's 86 MW cogeneration facility that currently sells its full output and is directly interconnected to Duke Energy Carolinas, LLC ("DEC"). The facility is a fully operational QF as described in the self-certification of qualifying facility ("QF") status filed with the Federal Energy Regulatory Commission ("FERC") in Docket No. QF94-160-012 (the "Facility"). By submitting this Notice, Cherokee is making a legally binding offer of all capacity and energy associated with the Facility to DEP as of January 1, 2021, the day after expiration of its current Power Sales Agreement between Cherokee and DEC dated June 28, 2012, effective between July 1, 2013 and December 31, 2020 ("Power Sales Agreement"). Cherokee has been providing capacity and dispatchable energy to DEC under this Power Sales Agreement.

Consistent with Cherokee's prior business practices with respect to the Power Sales Agreement, Cherokee submits this legally binding offer prior to the expiration of its present contract with DEC. This practice helps to ensure a smooth transition to the next contract term and will enable DEP to take the Facility into account in its resource planning and capacity needs. Cherokee looks forward to working with DEP to reach mutually agreeable terms and establish the applicable avoided cost rate for the new contract.

The Notice establishes Cherokee's legally enforceable obligation ("LEO") under the Public Utility Regulatory Policies Act ("PURPA"), FERC's implementing PURPA regulations, and applicable FERC precedent. This Notice is consistent with the approach toward PURPA implementation referenced by FERC with respect to merger of DEP and DEC, where FERC expressly relied on the representations of the Duke merging parties that both DEP and DEC would each remain subject to their PURPA obligations post-merger. *See* Order on Disposition of Jurisdictional Facilities and Merger, 136 FERC ¶ 61,245 at ¶ 148 (2011). The Duke companies also emphasized the economies of scale and efficiencies that would result by the interconnected DEC and DEP systems operated on an integrated, jointly dispatched basis, "to permit the more efficient operation of their combined resources."[1]

As Cherokee has explained in communications with DEC, Cherokee is indifferent as to whether or not it "puts" its energy and capacity to DEP, DEC, or both. While DEC has recently informed Cherokee that it does not have a current capacity need until 2028 and did not include a capacity component in its indicative avoided cost rates, Cherokee notes that DEP does have a capacity need, as evidenced by its 2018 Integrated Resource Plan and its recent request for proposal for capacity issued by DEP dated August 27, 2018. Therefore, even if DEC does not have a capacity need, the Duke companies can make the most efficient use of existing facilities and can avoid unnecessary capacity additions or procurements by facilitating Cherokee's PURPA of energy and capacity to DEP.

Cherokee, similar to DEC's own generation, may be recognized as a network resource for DEP.[2] Further, under 18 CFR § 292.303, it is the QF's option whether to sell to a directly or indirectly interconnected utility, as the relevant PURPA regulation provides that a utility "shall purchase" any energy and capacity from a QF indirectly connected that elects to have the power wheeled to the indirectly connected utility. Cherokee's request to sell to DEC, DEP, or both, optimizes Cherokee's value as a resource, helps avoid unnecessary capital additions, and is fully consistent with PURPA requirements, in general, and Cherokee's rights as a QF under PURPA, specifically

Pursuant to PURPA and its implementing regulations, Cherokee establishes the avoided cost for its energy and capacity as of today, December 10, 2018, the date that the LEO is incurred. *See* 18 C.F.R. § 292.304(d)(2)(ii) (providing an unqualified right for QFs to establish avoided costs calculated at the time the LEO obligation is incurred). Thus Cherokee requests that DEP tender its avoided cost rates to Cherokee as soon as possible to inform the companies' negotiations.

The documents attached hereto provide the information to establish a LEO for DEP to purchase all or part of Cherokee's energy and capacity output made available as of January 1, 2021, the day after its current Power Sales Agreement expires. However, if DEP believes it needs additional information for Cherokee to establish the LEO, Cherokee requests that DEP inform Cherokee within five (5) business days and detail the specific information requested.

We look forward to a productive process for negotiating establishing a new power purchase agreement for the Facility. If you have any questions regarding the enclosed information, please contact me at your convenience.

Sincerely,

Name: Carolyne Murff
Title: SVP

---

1 *Id.* at P 5.

2 Though Cherokee is physically interconnected to DEC, there should not be any impediment to Cherokee being designated as a DEP network resource and Cherokee's power being delivered to DEP. *See, e.g.*, Section 30.6 of the Joint OATT.

Cherokee County Cogeneration Partners, LLC

Attachments

Cherokee County Cogeneration Partners, LLC FERC Form 556
Negotiated Pricing Template
Notice of Commitment of Cherokee County Cogeneration Partners, LLC

NOTICE OF COMMITMENT TO SELL THE OUTPUT OF A QUALIFYING FACILITY GREATER THAN 1MW$_{AC}$ TO Duke Energy Carolinas, LLC or Duke Energy Progress, LLC

This notice of commitment form establishes the procedure for a qualifying facility ("QF") with a nameplate capacity greater than 1 MW$_{AC}$ to establish a legally enforceable obligation ("LEO") and to commit to sell the output of a proposed QF generating facility to Duke Energy Carolinas, LLC or Duke Energy Progress, LLC (the "Company") as provided for in N.C. Gen. Stat. § 62-156(b) and 18 C.F.R. 292.304(d)(2). Please note that a different form is available for QFs with a nameplate capacity of 1 MW$_{AC}$ or less seeking to commit to sell their output to the Company under the currently available standard offer power purchase agreement and terms and conditions.

1. Delivery; Notices to Company. The QF shall deliver, via certified mail, courier, hand delivery or email, its executed Notice of Commitment to:

   Duke Energy – Distributed Energy Technologies
   400 South Tryon Street
   Mail Code: ST 14A
   Charlotte, North Carolina 28202
   Attn.: Wholesale Renewable Manager
   DERContracts@duke-energy.com

Any subsequent notice that a QF is required to provide to Company pursuant to this Notice of Commitment shall be delivered to the same address by one of the foregoing delivery methods.

2. Seller Information. The name, address, and contact information for Seller is:

   Legal Name of Seller: Cherokee County CogenerationPartners, LLC

   Contact Person: Carolyne Murff______ Telephone: 212-615-3456

   Address: 1700 Broadway 35th Floor, NY, NY 10019 Email: cmurff@lspower.com

3. Commitment to Sell. Seller hereby commits to sell to the Company all of the electrical output of the Seller's QF described in Seller's self-certification of QF status filed with the Federal Energy Regulatory Commission in Docket No. QF94-160-012 (the "Facility").

4. Certifications. By execution and submittal of this commitment to sell the output of the Facility (the "Notice of Commitment"), Seller certifies as follows:

   (Select and complete the applicable certification(s) in Sections 4(A) and 4(B) below)

A. Certificate of Public Convenience and Necessity; or Report of Proposed Construction

i. N/A[1] Seller has received a certificate of public convenience and necessity ("CPCN") for the construction of its ______kW (net capacity$_{ac}$) Facility from the North Carolina Utilities Commission ("NCUC") pursuant to North Carolina General Statute § 62-110.1 and NCUC Rule R8-64, which CPCN was granted by NCUC on [insert date] in Docket No. _______________.

ii. N/A Seller is exempt from the CPCN requirements pursuant to North Carolina General Statute § 62-110.1(g) and has filed a report of proposed construction for its ________________kW (net capacity$_{ac}$) Facility with the NCUC pursuant to NCUC Rule R8-65 ("Report of Proposed Construction") on [insert date] in Docket No. ___.

B. Application to Interconnect QF Facility to Company's System[2]

If Seller is requesting to become an Interconnection Customer of the Company, as that term is defined in the North Carolina Interconnection Procedures ("NCIP"), please indicate below whether the Seller has requested to interconnect the Facility under either: (i) the NCIP Section 3 ("Fast Track," as defined in NCIP Section 3.1); or (ii) NCIP Section 4 Full Study Process:

i. N/A Section 3 Fast Track:

a. Seller is eligible for interconnection under NCIP Section 3.1;
b. Seller has submitted the completed NCIP Attachment 1 Interconnection Request Application Form on [insert date] requesting Fast Track review;
c. The Company has accepted the Section 3 Interconnection Request as complete and provided the Interconnection Customer with queue number ______; and
d. Please select as applicable:

1. _____The Company has completed the Section 3 Fast Track study process and delivered a final Interconnection Agreement to Seller for execution; or

2. _____Seller was preliminarily determined a Project A or Project B by the Company under NCIP 1.8 and 105 days have passed since Seller's interconnection request was submitted to the Company; or

[1] Cherokee is an existing Facility located in the State of South Carolina.
[2] Cherokee is an existing Facility interconnected to the DEC system.

3. _______Seller was preliminarily determined to be "On Hold" for System Impact Study under NCIP 1.8.3 and the Company has subsequently determined that Seller is now a Project B and at least 105 have passed since Seller became a Project B.

ii. N/A Section 4 Full Study:

a. Seller has submitted the completed NCIP Attachment 1 Interconnection Request Application Form on [insert date] requesting to interconnect under the NCIP Section 4 Study Process;

b. The Company has accepted the Section 4 Interconnection Request as complete and provided the Interconnection Customer with queue number ______; and

c. Please select as applicable

1. _______ Seller has executed and returned a System Impact Study Agreement to begin the Section 4 study process after being preliminarily determined a Project A or Project B by the Company under NCIP 1.8 and (i) Seller has received a System Impact Study Report or (ii) at least 105 days have passed since Seller's interconnection request was submitted to the Company; or

2. ________Seller was preliminarily determined to be "On Hold" for System Impact Study under NCIP 1.8.3 and the Company has determined that Seller is now a Project B and (i) Seller has received a System Impact Study Report or (ii) at least 105 have passed since Seller became a Project B.

5. Effective Date. This Notice of Commitment shall take effect on its "Submittal Date" as hereinafter defined. "Submittal Date" means (a) the receipted date of deposit of this Notice of Commitment with the U.S. Postal Service for certified mail delivery to the Company, (b) the receipted date of deposit of this Notice of Commitment with a third-party courier (e.g., Federal Express, United Parcel Service) for trackable delivery to the Company, (c) the receipted date of hand delivery of this Notice of Commitment to the Company at the address set forth in paragraph 1, above, or (d) the date on which an electronic copy of this Notice of Commitment is sent via email to the Company if such email is sent during regular business hours (9:00 a.m. to 5:00 p.m.) on a business day (Monday through Friday excluding federal and state holidays). Emails sent after regular business hours or on days that are not business days shall be deemed submitted on the

next business day.

6. LEO Date. By execution and submittal of this Notice of Commitment, and assuming that the certifications provided herein are accurate, Seller acknowledges that the legally enforceable obligation date ("LEO Date") for Seller's QF Facility will be determined as of the Submittal Date or such later date as may be established by the NCUC. Rates for purchases from the Seller's QF Facility will be based on the Company's avoided costs as of the LEO Date, calculated using data current as of the LEO Date.

7. Termination. This Notice of Commitment shall automatically terminate and be of no further force and effect in the following circumstances:

   a. Upon execution of a PPA between Seller and Company.

   b. If Seller does not execute a PPA within six months (as such period may be extended by mutual agreement of Seller and Company) after the Company's submittal of the PPA to the QF, provided, however, that if Seller is an Interconnection Customer of the Company and no interconnection agreement for the Facility has been tendered to Seller prior to the expiration of such deadline, the deadline for execution of the PPA shall be automatically extended until the date that is five days after the date that the final Interconnection Agreement is tendered to the Seller. Notwithstanding the foregoing, if the PPA proposed by the Company becomes the subject of arbitration or complaint proceeding, the six month deadline for execution of the PPA shall be tolled upon the filing of the pleading commencing such proceeding and thereafter the deadline for execution of the PPA will be as directed by the NCUC.

   c. Seller's failure to execute a PPA prior to expiration of the Notice of Commitment period, as identified in subsection 7.(b) above, shall result in termination of the LEO and the QF shall only be offered an as-available rate for a two-year period following expiration of the Notice of Commitment. Thereafter, the QF may elect to submit a new Notice of Commitment Form to establish a new LEO.

The undersigned is duly authorized to execute this Notice of Commitment for the Seller:

[Name]

Senior Vice President
[Title]

Cherokee County Cogeneration Partners, LLC
[Company]

12 Dec 2018
[Date]

Duke Energy Carolinas, LLC and Duke Energy Progress, LLC
Keen Direct Exhibit 2

Attachment 7

DEP December 21, 2018 Letter to Cherokee Regarding Commencing Negotiations

DUKE ENERGY.

December 21, 2018

Via Email and Priority Mail

Ms. Carolyne Murff
Senior Vice President
Cherokee County Cogeneration Partners, LLC
1700 Broadway, 35th Floor
New York, NY 10019

Re: Cherokee County Cogeneration Partners, LLC ("Cherokee") letter dated December 12, 2018 (the "December 12 Letter")

Dear Ms. Murff:

Duke Energy Progress, LLC ("DEP") acknowledges receipt of the December 12 Letter, in which Cherokee purports to establish a legally enforceable obligation ("LEO") within the meaning of PURPA for Cherokee's existing 86 MW generating facility (the "Facility") and which offers to sell all of the capacity and energy associated with the Facility to DEP commencing on January 1, 2021. DEP recognizes Cherokee's desire to commence negotiations prior to the expiration of the existing power purchase agreement between Cherokee and Duke Energy Carolinas, LLC ("PPA") which expires on December 31, 2020 and is prepared to negotiate in good faith towards a new agreement for the purchase and sale of the full output of the Facility; however, DEP does not agree that the December 12 Letter or the accompanying Notice of Commitment form referenced therein establish a legally enforceable obligation or "LEO" under PURPA. Among other things, the use of the Notice of Commitment form is limited to qualifying facilities of two (2) MW or less that are eligible for DEP's South Carolina Schedule PP standard offer tariff and is therefore not applicable to the Facility.

Notwithstanding the foregoing, subject to the conditions set out in this paragraph, DEP is prepared to commence negotiations with Cherokee for a new PPA that would become effective on or after January 1, 2021. DEP also agrees to provide Cherokee indicative avoided cost pricing based upon DEP's forecasted avoided costs calculated as of December 2018, as requested. Due to the time required for DEP to calculate its avoided cost, this information will not be available until on or about January 31, 2019. At that time, DEP will deliver its avoided costs as well as a form PPA for the purchase of Cherokee's full output of energy and capacity over a five-year term commencing January 1, 2021. The avoided cost pricing will remain available for sixty (60) days from the date delivered by DEP to allow a reasonable amount of time for the parties to conclude any needed negotiations regarding the form of PPA.

The transactions contemplated under this letter and all information disclosed by the parties related thereto shall be subject to that certain Mutual Confidentiality Agreement between Duke Energy Business Services, LLC for and on behalf of Duke Energy Carolinas, LLC and Duke Energy Progress, LLC and Cherokee County Cogeneration Partners, LLC, dated as of October 11, 2018.

Please feel free to contact me at (727) 820-4500 if you have any questions.

Sincerely,

Michael T. Keen
Duke Energy
Business Development Manager

Cc:
David J. Marshall
LS Power
1700 Broadway, 35th Floor
New York, NY 10019

Duke Energy Carolinas, LLC and Duke Energy Progress, LLC
Keen Direct Exhibit 2

Attachment 8

DEC December 21, 2018 Email Response
Declining Non-PURPA Proposal

From:	Keen, Michael T <Michael.Keen@duke-energy.com>
Sent:	Friday, December 21, 2018 10:35 AM
To:	Aaron Pupa
Cc:	Johnson, David B; Rios Jr., Martin
Subject:	RE: Cherokee's Request for DEC's Avoided Costs
Attachments:	Cherokee County Term Sheet 120718.pdf

Aaron,

Thanks for sending me this term sheet. As I mentioned on the phone, DEC is not actively pursuing any capacity at this time because DEC does not currently have a capacity need. In addition, the pricing included in this term sheet is well above DEC's avoided costs we sent you on 10/31/18 and is also higher than the current market price for capacity delivered into DEC. Furthermore, as you are aware, Cherokee sent DEP a legally binding offer committing to sell all the capacity and energy from Cherokee to DEP commencing on 1/1/21. This commitment will super cede other offers from Cherokee. At this time, we are developing the avoided costs for DEP which you requested. Please let me know if you have any questions. Thank you.

Michael Keen
Business Development Manager
Duke Energy
Office 727.820.4500
Mobile 727.424.2665

Duke Energy Carolinas, LLC and Duke Energy Progress, LLC
Keen Direct Exhibit 2

Attachment 9

DEP February 1, 2019 Transmittal of Avoided Cost Rates
To Cherokee

DUKE ENERGY.

February 1, 2019

Via Email and Priority Mail

Ms. Carolyne Murff
Senior Vice President
Cherokee County Cogeneration Partners, LLC
1700 Broadway, 35th Floor
New York, NY 10019

Re: Cherokee County Cogeneration Partners, LLC ("Cherokee") - Request for Avoided Costs of Duke Energy Progress, LLC ("DEP")

Dear Ms. Murff:

As requested, DEP's indicative avoided costs as of December, 2018 are specified below. The rates have been calculated using DEP's standard system methodology for Qualifying Facilities based on DEP's December, 2018 system costs. The methodology was recently updated. The rates include a winter capacity component because DEC has identified a winter capacity need in its Integrated Resource Plan ("IRP") starting in 2020. The costs are levelized for the five-year term beginning on January 1, 2021 and are based on the energy being delivered into DEP on a firm basis.

START DATE	January 1, 2021
TERM	5 years
CAPACITY	
Winter (morning)	$125.74/MWh
Winter (evening)	$53.89/MWh
ENERGY	
Summer on-peak	$28.15/MWh
Non-summer on-peak (morning)	$33.18/MWh
Non-summer on-peak (evening)	$30.53/MWh
Summer off-peak	$24.69/MWh
Non-summer off-peak	$22.63/MWh

The capacity credit shall only be applicable in the winter months defined as calendar months December through March. During the winter months, the morning on-peak hours shall be all winter days from 6:00 a.m. to 9:00 a.m. and evening on-peak hours shall be all winter days from 6:00 p.m. to 9:00 p.m. Capacity credits are not applicable in all other months.

For energy credit purposes, summer months are defined as calendar months May through September and non-summer months are defined as calendar months October through April. Summer on-peak hours shall be Monday through Friday from 1:00 p.m. to midnight. Non-summer on-peak hours shall be Monday through Friday with morning hours from 5:00 a.m. to 9:00 a.m. plus evening hours from 5:00 p.m. to midnight. All other hours, plus the following holidays, shall be off-peak: New Year's Day, Good Friday, Memorial Day, Independence Day, Labor Day, Thanksgiving Day and the day after, and Christmas Day. When a holiday falls on a Saturday, the Friday before the holiday will be considered off-peak; when the holiday falls on a Sunday, the following Monday will be considered off-peak.

The avoided costs included in this letter are available until March 7, 2019. All information included in this letter is considered confidential and protected under the confidentiality agreement executed by both parties on October 11, 2018.

Please feel free to contact me at (727) 820-4500 if you have any questions.

Sincerely,

Michael T. Keen
Duke Energy
Business Development Manager

Cc:
David J. Marshall
LS Power
1700 Broadway, 35th Floor
New York, NY 10019

Duke Energy Carolinas, LLC and Duke Energy Progress, LLC
Keen Direct Exhibit 2

Attachment 10

Cherokee's April 30, 2019 Letter to DEC

LS POWER
Innovation and Investment in Energy

1700 Broadway
35th Floor
New York, NY 10019
T: 212-615-3456

April 30, 2019

Duke Energy Carolinas, LLC
Michael Keen
Business Development Manager Renewable Compliance & Origination
FL 155 299 First Avenue North
St. Petersburg, FL 33701
michael.keen@duke-energy.com

Kathy Dunn
Duke Energy - Distributed Energy Technologies
400 South Tryon Street
Mail Code: ST 14A
Charlotte, North Carolina 28202
Kathy.Dunn@duke-energy.com

Dear Mr. Keen:

In connection with our evaluation of a new PPA between the Cherokee County Cogeneration Partners, LLC ("Cherokee") project and Duke Energy Carolinas, LLC ("DEC"), Cherokee requests the following additional information with respect to the avoided cost rates that you forwarded by letter dated October 31, 2018. We appreciate your responsiveness to these requests.

1. Were the avoided cost rates and underlying methodology filed with the state commission? If so, please provide any supporting calculations or other documentation filed with the commission, as well as any orders issued by, or letters or other communications received from, the commission noting approval or acceptance of the avoided cost rates and underlying methodology.

2. Please provide the methodology and any back-up information that DEC used to calculate the On-Peak and Off-Peak Energy Prices. How were the On-Peak and Off-Peak periods determined?

3. A single On-Peak and Off-Peak Energy Price was provided for the entire year. Please provide DEC's avoided cost On-Peak and Off-Peak Energy Prices allocated between the winter and summer months.

4. With regard to the 5 year term, please provide any supporting data or documentation supporting the 5 year term. Similar to no. 1 above, please provide any orders issued by, or any letters or communications received from, the commission noting approval or acceptance of the 5 year term as the appropriate term for a PURPA power purchase agreement.

We look forward to your response.

Very truly yours,

Carolyne Murff
Senior Vice President
Cherokee County Cogeneration Partners, LLC

Duke Energy Carolinas, LLC and Duke Energy Progress, LLC
Keen Direct Exhibit 2

Attachment 11

Cherokee's April 30, 2019 Letter to DEP

Innovation and Investment in Energy

1700 Broadway
35th Floor
New York, NY 10019
T: 212-615-3456

April 30, 2019

Duke Energy Progress, LLC
Michael Keen
Business Development Manager Renewable Compliance & Origination
FL 155 299 First Avenue North
St. Petersburg, FL 33701
michael.keen@duke-energy.com

Kathy Dunn
Duke Energy - Distributed Energy Technologies
400 South Tryon Street
Mail Code: ST 14A
Charlotte, North Carolina 28202
Kathy.Dunn@duke-energy.com

Dear Mr. Keen:

In connection with our evaluation of a new PPA between the Cherokee County Cogeneration Partners, LLC ("Cherokee") project and Duke Energy Progress, LLC ("DEP"), Cherokee requests the following additional information with respect to the avoided cost rates that you forwarded by letter dated February 1, 2019. We appreciate your responsiveness to these requests.

1. Were the avoided cost rates and underlying methodology filed with the state commission? If so, please provide any supporting calculations or other documentation filed with the commission, as well as any orders issued by, or letters or other communications received from, the commission noting approval or acceptance of the avoided cost rates and the underlying methodology.

2. Please provide the methodology and any back-up information that DEP used to calculate the On-Peak and Off-Peak Energy Prices. How were the On-Peak and Off-Peak and summer and non-summer periods determined?

3. Please provide the methodology and any back-up information that DEP used to calculate the Capacity prices and why are the payments only applicable to the morning and evening periods for December – March?

4. With regard to the 5 year term, please provide any supporting data or documentation supporting the 5 year term. Similar to no. 1 above, please provide any orders issued by, or any letters or communications received from, the commission noting approval or acceptance of the 5 year term as the appropriate term for a PURPA power purchase agreement.

5. Please confirm the start date, time periods (e.g. summer and/or winter, on-peak and/or off peak) and products (e.g. capacity and/or energy) for which DEP is awarding resources for its Solicitation for Capacity and Energy (Power Advocate Bidding Event #81056) and the date for which those awards will be confirmed.

We look forward to your response.

Very truly yours,

Carolyne Murff
Senior Vice President
Cherokee County Cogeneration Partners, LLC

Duke Energy Carolinas, LLC and Duke Energy Progress, LLC
Keen Direct Exhibit 2

Attachment 12

Joint DEC/DEP June 14, 2019 Letter
Responding to LS Power's April 30, 2019 Letters

DUKE ENERGY.

June 14, 2019

Via Email and Priority Mail

Ms. Carolyne Murff
Senior Vice President
Cherokee County Cogeneration Partners, LLC
1700 Broadway, 35th Floor
New York, NY 10019

Re: Cherokee County Cogeneration Partners, LLC ("Cherokee") letters dated April 30, 2019 - Request for Additional Information

Dear Ms. Murff:

Thank you for your request for additional information concerning the avoided cost calculations for DEC and DEP. Pursuant to Order No. 2016-349 of the South Carolina Public Service Commission ("PSC"), Duke Energy Carolinas ("DEC") and Duke Energy Progress ("DEP") offer ten (10) year PPAs for Qualifying Facilities ("QFs") eligible for either DEC's or DEP's standard offer tariff (2 MW or less). The avoided cost rates and methodology are approved by the PSC and included in the standard offer tariff. Pursuant to PURPA and Order No. 81-214, DEC and DEP negotiate PPAs with QFs larger than two (2) MW and files those PPAs with the PSC. Both DEC and DEP currently offer a five (5) year term for projects not eligible for the standard offer tariff, unless the project qualifies under the newly enacted House Bill 3659, which applies to small power producers and not cogenerators.

Avoided energy costs are determined by modeling the addition of a 100 MW no cost purchase (additional generation) in all hours to the utility's generation system. Peak and off-peak avoided energy costs are calculated using the production costing model results for a base case compared to a change case with the 100 MW no cost purchase included. The cost differences from the comparison for each respective on and off-peak period form the basis of the avoided cost values. On peak and off-peak periods are consistent with the applicable rate design used in the December 2018 SC standard-offer rate filing in Docket No. 1995-1192-E.

The rate design used in the SC standard rate offer for each utility reflects a 90%-100% allocation of annual avoided capacity cost to the winter season. This reflects the dominant emphasis of winter peaking conditions on the need for future generation. The morning winter peak is the primary contributor to loss of load exposure, but the secondary evening peak also contributes to the need for available capacity – just to a lesser degree.

Lastly, the information you requested pertaining to DEP's market solicitation is considered confidential. Duke Energy appreciates Cherokee's participation in the market solicitation and we are disappointed that Cherokee's response was not competitive.

Please feel free to contact me at (727) 820-4500 if you have any further questions.

Sincerely,

Michael T. Keen
Duke Energy
Business Development Manager

Duke Energy Carolinas, LLC and Duke Energy Progress, LLC
Keen Direct Exhibit 2

Attachment 13

Confidential Cherokee County Proposals to DEP
Delivered April 9, 2020

From: Nathan Hanson <NHanson@lspower.com>
Sent: Thursday, April 9, 2020 6:47 PM
To: Johnson, David B; Keen, Michael T
Cc: Nathan Hanson
Subject: Cherokee County Proposal
Attachments: Cherokee County Term Sheet 4-9-20.pdf

*** Exercise caution. This is an EXTERNAL email. DO NOT open attachments or click links from unknown senders or unexpected email. ***

David, Michael, attached are two proposals for your consideration. [redacted] Take a look and if you have any questions, please just give me a call.

Talk to you soon and stay healthy.

Nathan Hanson
LS Power
212-547-2917 (o)
646-770-7244 (m)

Cherokee County Cogeneration Partners, LLC
16150 Main Circle Drive, Suite 310
Chesterfield, MO 63017

April 9, 2020

Attn: Mr. Michael Keen
Duke Energy Progress

SUBJECT: Proposal to extend Cherokee County Cogeneration Power Purchase Agreement

Dear Mr. Keen:

Per our discussion last week, Cherokee County Cogeneration Partners, LLC ("Cherokee" or "Seller") is pleased to provide the enclosed proposal ("Proposal") to Duke Energy Progress ("DEP") to enter into a new Power Purchase Agreement.

Cherokee looks forward to continuing the existing long-term relationship with DEP, and anticipates using the current Power Purchase Agreement as a form to enter into a new purchase agreement. [redacted]

[redacted]

Cherokee is a FERC Qualifying Facility ("QF") under the Public Utility Regulatory Policies Act ("PURPA") and reserves all of its rights pursuant thereto, including, but not limited to, the right to sell its output to DEP pursuant to a Legally Enforceable Obligation made pursuant to PURPA. Cherokee provides significant local economic support, employing 16 individuals at the facility and another 50 employees (annual average) at the adjacent ice manufacturing facility and facility operations provides on average over $5 million each year to the local economy for necessary services. Cherokee is prepared to enter into negotiations and execute an agreement on the basis of this Proposal and is open to other transaction structures that may be preferable to DEP. Should you have any questions, need for clarifications or require additional information please do not hesitate to contact me at 212-547-2917 or via email at nhanson@lspower.com.

Sincerely,

Nathan Hanson
SVP

Cc: David Johnson

ATTACHMENT 1 – [redacted]

Contract Quantity	[redacted]
Term	[redacted]
Transaction Overview	[redacted]
Facility	Cherokee County Cogeneration
Contract	[redacted]
Capacity Charge	[redacted]) [redacted]
VOM	[redacted]
Start Price	[redacted]
Buyout Option	[redacted]

ATTACHMENT 2 – [redacted]

Contract Quantity	[redacted]
Term	[redacted]
Transaction Overview	[redacted]
Facility	Cherokee County Cogeneration
Contract	[redacted]
Capacity Charge	[redacted] [redacted] [redacted]
VOM	[redacted]
Start Price	[redacted]
Buyout Option	[redacted]

Duke Energy Carolinas, LLC and Duke Energy Progress, LLC
Keen Direct Exhibit 2

Attachment 14

LS Power May 4, 2020 Letter
To DEP Requesting Updated Avoided Cost Information

Cherokee County Cogeneration Partners, L.L.C.
132 Peoples Creek Road • Gaffney, SC 29340
(864) 488-3630 • Fax (864) 488-1312

Duke Energy Progress, LLC
Michael Keen
Business Development Manager Renewable Compliance & Origination
FL 155 299 First Avenue North
St. Petersburg, FL 33701
michael.keen@duke-energy.com

Kathy Dunn
Duke Energy - Distributed Energy Technologies
400 South Tryon Street
Mail Code: ST 14A
Charlotte, North Carolina 28202
Kathy.Dunn@duke-energy.com

Date: May 4, 2020

Re: Cherokee County Cogeneration Partners

Greetings:

Following up on our discussion regarding Duke Energy Progress' (DEP) rejection of Cherokee County Cogeneration Partners, LLC's (Cherokee) April 9, 2020 proposal to enter into a power sales agreement (PSA) for the sale of energy and capacity to DEP by Cherokee, Cherokee would like to clarify certain items related to its rights under Public Utility Regulatory Policies Act (PURPA). Cherokee is disappointed that we have not been able to pursue a negotiated solution, which would be beneficial to both Cherokee and DEP. As you know, Cherokee has been providing electric power and capacity to Duke Energy Carolinas, LLC pursuant to a PSA that expires as of December 31, 2020. However, given the PSA expiration on December 31, 2020, Cherokee needs to pursue its options available to it under PURPA and applicable state law, in case a successor PSA has not been finalized with DEP.

Cherokee would prefer to reach agreement on a new PSA with DEP with reasonable rates and terms, but we are prepared to seek regulatory relief to enforce our rights as a Qualifying Facility (QF) under PURPA. On December 12, 2018, Cherokee submitted a complete package of information to DEP exercising its unilateral right under PURPA and its implementing regulations. Cherokee thereby established the applicable avoided cost for its energy and capacity as of December 12, 2018, the date that a Legally Enforceable Obligation (LEO) was established. Cherokee requests that DEP tender its avoided cost rates to Cherokee for five and ten year terms commencing January 1, 2021 along with supporting backup information for the calculation of the energy and capacity rates as soon as possible to inform DEP's and Cherokee's negotiations, without waiving Cherokee's rights under its previously established LEO.

Cherokee requests a meeting with DEP to discuss the avoided cost rates available to Cherokee under DEP's avoided cost methodology for both five and ten year terms, including any revisions to such methodology as ordered in the Public Service Commission of South Carolina's January 2, 2020 Order No. 2019-881. While Cherokee may have received avoided cost rates from DEP previously, those rates may have changed as a result of Order No. 2019-881 and other factors.

Without waiving its right to exercise the LEO it has already established through its December 12, 2018 communications, Cherokee is amenable to a negotiated solution, which would be beneficial to both Cherokee and DEP. We look forward to a productive process for negotiating a new PSA for Cherokee. If you have any questions regarding the enclosed information, please contact me at your convenience.

Sincerely,

Carolyne Murff

Name: Carolyne Murff
Title: Senior Vice President
Cherokee County Cogeneration Partners, LLC

Duke Energy Carolinas, LLC and Duke Energy Progress, LLC
Keen Direct Exhibit 2

Attachment 15

DEP's June 24, 2020 Responsive Letter
To LS Power's May 4, 2020 Letter

DUKE ENERGY.

PROPRIETARY AND CONFIDENTIAL

June 24, 2020

Via Email and Priority Mail

Ms. Carolyne Murff
Senior Vice President
Cherokee County Cogeneration Partners, LLC
1700 Broadway, 35th Floor
New York, NY 10019

Re: Cherokee County Cogeneration Partners, LLC ("Cherokee") letter dated May 4, 2020

Dear Ms. Murff:

Thank you for your letter dated May 4, 2020 on behalf of Cherokee County Cogeneration Partners LLC ("Cherokee"). As we have previously discussed, Duke Energy Progress ("DEP") is unable to accept the proposal submitted by Cherokee, as it is priced considerably higher than DEP's avoided cost under PURPA.

DEP disagrees that Cherokee established a legally enforceable obligation ("LEO") on December 18, 2018, or otherwise. Cherokee has not made a binding commitment to deliver its energy and/or capacity over a specified delivery term through either a mutually binding, legally-enforceable contract, or through non-contractual means. Prior to December 30, 2019, when the Notice of Commitment Form ("NOC Form") was approved by the Public Service Commission of South Carolina ("SCPSC") for QFs greater than 2 MW, Duke recognized a non-contractual LEO where the QF is ready, willing, and able to enter into a Purchase Power Agreement ("PPA") with the utility, and, but for the conduct of the utility, there would be a contract, provided the QF can deliver its electrical output to the utility under the LEO within 180 days. Moreover, in DEP's letter dated February 1, 2019, DEP informed Cherokee that the avoided energy and avoided capacity rates provided in the letter represented indicative pricing and that such rates were only available until March 7, 2019. Cherokee did not enter into a PPA with DEP by March 7, 2019, and as a result, the avoided cost rates set forth in the February 1, 2019 letter are no longer available to Cherokee.

Cherokee may choose to establish a LEO by either: (1) submitting a completed NOC Form to DEP (where the avoided cost rates will be determined as of the "Submittal Date," as defined in the NOC Form); or by (2) executing and submitting the attached PPA as long as the PPA is executed and submitted to DEP by August 23. The rates included in the PPA reflect DEP's methodology for calculating avoided cost that has been approved by the SCPSC Order Nos. 2019-881(A) and 2020-315. As explained in DEP's letter to Cherokee dated June 14, 2019, DEC and DEP offer a five (5) year term of contract for projects not eligible for the standard offer, unless the project qualifies under Act 62 (formerly House Bill 3659) as a small power producer.

If the PPA is submitted after August 23, then the avoided cost rates will be updated to reflect then-current inputs and assumptions.

Please feel free to contact me at (727) 820-4500 if you have any further questions.

Sincerely,

Michael T. Keen
Duke Energy
Business Development Manager

POWER PURCHASE AGREEMENT

Buyer: Duke Energy Progress, LLC

Overnight Mail: 400 South Tryon Street
Mail Code: ST 14A
Charlotte, North Carolina 28202
Regular Mail: PO Box 1010
Mail Code: ST 14A
Charlotte, NC 28201-1010
Attn.: Contract Administrator
DERContracts@duke-energy.com

With Additional Notices of Events of Default
Or Potential Event of Default to:
Overnight Mail: 550 S. Tryon St.
Charlotte, North Carolina 28202
Regular Mail: P.O. Box 1321, DEC45
Charlotte, North Carolina 28201-1321
Attn.: VP Commercial Legal Support

Seller: Cherokee County Cogeneration Partners, LLC
____
____
____
____

This Power Purchase Agreement, including Exhibits 1-10 hereto, which are incorporated into and made part hereof (collectively, the "Agreement"), is made and entered into by and between Cherokee County Cogeneration Partners, LLC ("Seller") and Duke Energy Progress, LLC ("Buyer") under the terms specified herein. Buyer and Seller are sometimes herein referred to individually as a "Party" and collectively as the "Parties." Notwithstanding anything set forth herein, neither this Agreement nor any transaction contemplated hereunder will be effective **unless and until both Parties have executed** and delivered this Agreement, and the later of such date shall be the "Effective Date" of this Agreement.

NOW THEREFORE, IN CONSIDERATION OF THE PROMISES AND MUTUAL COVENANTS SET FORTH HEREIN, FOR GOOD AND VALUABLE CONSIDERATION, THE SUFFICIENCY OF WHICH IS ACKNOWLEDGED, AND INTENDING TO BE BOUND HEREBY, THE PARTIES AGREE AS FOLLOWS:

1. **Definitions**

Unless defined in the body of the Agreement, any capitalized term herein shall have the meaning set forth below:

1.1. "AAA" is defined in Section 23.2.1.

1.2. "Abandon(s)" means the relinquishment of control or possession of the Facility and/or cessation of operations of or at the Facility by Seller. "Abandon" excludes cessation of generation to comply with Prudent Utility Practices, Permitted Excuse to Perform, or due to maintenance or repair of the Facility (including Maintenance Outages and Planned Outages), provided that such maintenance or repair activities are being performed in a Commercially Reasonable Manner and with Prudent Utility Practice.

1.3. "Affiliate" means, with respect to any entity, each entity that directly or indirectly controls, is controlled by, or is under common control with, such designated entity, with "control" meaning the possession, directly or indirectly, of the power to direct management and policies, or otherwise have control of an entity, whether through the ownership of voting securities or by contract or otherwise. Notwithstanding the foregoing, with respect to Buyer the term Affiliate does not include any subsidiaries or affiliates whose activities are subject to the oversight or regulation of any state commission(s) and/or the Federal Energy Regulatory Commission.

1.4. "Agreement" is defined in the introductory paragraph hereof.

1.5. "Assignment" is defined in Section 24.1.

1.6. "Back-Up Tapes" is defined in Section 16.3.

1.7. "Bankrupt" means, with respect to a Party or any Affiliate of such Party that is currently acting as its credit support provider, that such Party or Affiliate acting as credit support provider: (a) makes an assignment or any general arrangement for the benefit of creditors; (b) files a petition or otherwise commences, authorizes or acquiesces in the commencement of a proceeding or cause of action under any bankruptcy or similar law for the protection of creditors; (c) has such a petition filed against it as debtor and such petition is not stayed, withdrawn, or dismissed within sixty (60) Business Days of such filing; (d) seeks or has a liquidator, administrator, receiver, trustee, conservator or similar official appointed with respect to it or any substantial portion of its property or assets; (e) has a distress, execution, attachment, sequestration or other legal process levied or enforced on or against all or substantially all of its assets; (f) is unable to pay its debts as they fall due or admits in writing of its inability to pay its debts generally as they become due; and/or (g) otherwise becomes bankrupt or insolvent (however evidenced).

1.8. "Billing Meter" is defined in Section 10.

1.9. "Billing Period" is defined in Section 11.

1.10. "Business Day" means any day on which the Federal Reserve member banks in New York City are open for business. A Business Day shall run from 8:00 a.m. to 5:00 p.m. Eastern Prevailing Time.

1.11. "Buyer" shall have the meaning specified in the first paragraph of this Agreement.

1.12. "Capacity" means and includes the electric generation capability and ability of the Facility and all associated characteristics and attributes, inclusive of the ability to contribute to peak system demands, as well as reserve requirements.

1.13. "Change of Control" means a transaction or series of related transactions (by way of merger, consolidation, sale of stock or assets, or otherwise) with any person, entity or "group" (within the meaning of Section 13(d)(3) of the U.S. Securities Exchange Act of 1934) of persons pursuant to which such person, entity, or group would directly or indirectly acquire (i) 50% or more of the voting interests in Seller or (ii) substantially all of the assets of Seller. Notwithstanding the foregoing, a Change of Control shall not be deemed to occur based on an internal reorganization where the ultimate parent of the Seller (as of the Effective Date) directly or indirectly retains 50% or more of the voting interests in Seller or substantially all of its assets and provided that Seller has provided Buyer no less than thirty (30) days prior written notice of such reorganization.

1.14. "Commercially Reasonable Manner" or "Commercially Reasonable" means, with respect to a given goal or requirement, the manner, efforts and resources a reasonable person in the position of the promisor would use, in the exercise of its reasonable business discretion and industry practice, so as to achieve that goal or requirement, which in no event shall be less than the level of efforts and resources standard in the industry for comparable companies with respect to comparable products. Factors used to determine whether a goal or requirement has been performed in a "Commercially Reasonable Manner" may include, but shall not be limited to, any specific factors or considerations identified in the Agreement as relevant to such goal or requirement.

1.15. "Commission" means the Public Service Commission of South Carolina, or any successor thereto.

1.16. "Contract Price" is defined in Section 4.3.

1.17. "Contract Quantity" is defined in Section 4.2.

1.18. "Costs" means, with respect to the Non-Defaulting Party, brokerage fees, commissions, and other similar third party transaction costs and expenses, and other costs and expenses reasonably incurred by such Party either in terminating any arrangement pursuant to which it has hedged its obligations or entering into new arrangements which replace the terminated transaction(s), and all reasonable attorneys' fees and other legal expenses incurred by the Non-Defaulting Party in connection with the termination.

1.19. "Credit Rating" means, with respect to any entity, the rating then assigned to such entity's unsecured, senior long-term debt obligations (not supported by third party credit enhancements) or if such entity does not have a rating for its senior unsecured long-term debt, then the rating then assigned to such entity as a corporate or issuer rating.

1.20. "Creditworthy" or "Creditworthiness" - means (i) a Person with an investment grade Credit Rating from two (2) of the three (3) Rating Agencies such that its senior unsecured debt (or issuer rating if such Person has no senior unsecured debt rating) is rated at least (A) BBB- by S&P, if rated by S&P, (B) Baa3 by Moody's, if rated by Moody's, and (C) BBB- by Fitch, if rated by Fitch, respectively, or (ii) has satisfactory and verifiable creditworthiness determined in Buyer's reasonable discretion.

1.21. "Defaulting Party" is defined in Section 19.1.

1.22. "Delivery Period" is defined in Section 4.1.

1.23. "Delivery Point" means the point of interconnection between DEC's transmission system and the DEP's transmission system.

1.24. "Dispatch Down" is defined in Section 8.6.

1.25. "Dispatch Down Payment Event" is defined in Section 8.6.

1.26. "Disputes" is defined in Section 23.1.

1.27. "Early Termination Date" is defined in Section 20.1.

1.28. "Effective Date" is defined in the introductory paragraph hereto.

1.29. "Emergency Condition" means, no matter the cause: (a) any urgent, abnormal, operationally unstable, dangerous, or public safety condition that is existing on the System or any portion thereof; (b) any urgent, abnormal, operationally unstable, dangerous, and/or public safety condition that is likely to result in any of the following: (i) loss or damage to the Facility or the System, (ii) disruption of generation by the Facility, (iii) disruption of service or stability on, to or of the System, or (iv) condition that may result in endangerment of human life or public safety; or (c) any circumstance that requires action by the System Operator to comply with standing NERC regulations or standards, including without limitation actions to respond to, prevent, limit, or manage loss or damage to the Facility, loss or damage to the System, disruption of generation by the Facility, disruption of service on the System, an abnormal condition on the System, and/or endangerment to human life or safety. An Emergency Condition will be an excuse to Seller's performance only if such condition is not due to Seller's negligence, willful misconduct, and/or Seller's failure to perform as required under this Agreement.

1.30. "Energy" means three-phase, 60-cycle alternating current electric power and energy, expressed in either kWh or MWh, as the case may be.

1.31. "EPT" or "Eastern Prevailing Time" means the time in effect in the Eastern Time Zone of the United States of America, whether it be Eastern Standard Time or Eastern Daylight Savings Time.

1.32. "Estimation Methodology" is defined in Section 8.6.2.

1.33. "Event of Default" is defined in Section 19.1.

1.34. "Expected Annual Output" means the quantity of Energy identified in Exhibit 5 for each calendar year during the Delivery Period of the Facility.

1.35. "Facility" means Seller's natural gas fueled combined cycle cogeneration facility located in Cherokee County, South Carolina, as further set forth in Exhibit 4.

1.36. "FERC" means the Federal Energy Regulatory Commission or any successor thereto.

1.37. Fitch" - means Fitch Ratings Ltd. or its successor.

1.38. "Force Majeure" is defined in Section 14.1.

1.39. "GAAP" is defined in Section 9.1.

1.40. "Gains" means, with respect to the Non-Defaulting Party, an amount equal to the present value of the economic benefit to the Non-Defaulting Party, if any (exclusive of Costs), resulting from the termination of this Agreement for the remaining Term, determined in a Commercially Reasonable Manner. Factors used in determining the economic benefit may include, without limitation, reference to information available either internally or supplied by third parties, including without limitation, quotations (either firm or indicative) of relevant rates, prices, yields, yield curves, or other relevant market data, comparable transactions, settlement prices or market prices for comparable transactions, forward price curves, production by comparable facilities, expected and historical production, all calculated for the remaining Term of the Agreement for the Product (inclusive of all components).

1.41. "Governmental Authority" means any federal, state or local government, legislative body, court of competent jurisdiction, administrative agency or commission or other governmental or regulatory authority or instrumentality or authorized arbitral body, including, without limitation, the Commission.

1.42. "Guarantor" means any Creditworthy Person having the authority and agreeing to guarantee a Party's obligations under this Agreement and is otherwise acceptable to Buyer in its reasonable discretion.

1.43. "Guaranty" means a parent company guaranty, in substantially the form set forth in Exhibit

6 attached hereto, provided by a Guarantor in favor of Buyer guaranteeing the obligations of Seller under this Agreement.

1.44. "Interconnection Agreement" means the separate interconnection and transmission service agreement (or agreements) to be negotiated and executed between Seller and the Transmission Provider concerning the interconnection of the Facility with the System and the requirements for transmission service.

1.45. "Interconnection Instruction" means any order, action, signal, requirement, demand, and/or direction, howsoever provided or implemented by the System Operator due to, in response to, or to address any condition relating to any service and/or obligation occurring under the Interconnection Agreement.

1.46. "Interest Rate" means, for any date, the lesser of (a) the per annum rate of interest equal to the prime lending rate as may from time to time be published in *The Wall Street Journal* under "Money Rates" on such day (or if not published on such day on the most recent preceding day on which published), plus two percent (2%); and, (b) the maximum rate permitted by applicable law.

1.47. "Interconnection Standards" means the South Carolina Generator Interconnection Procedures, Form, and Agreements for State-Jurisdictional Interconnections effective as of March 3, 2016 and approved in Docket No. 2015-362-E, Order No. 2016-191 and all replacements and amendments thereto.

1.48. "kW" means kilowatt.

1.49. "kWh" means kilowatt-hour.

1.50. "Letter(s) of Credit" means one or more irrevocable standby letters of credit substantially in the form of Exhibit 7 attached hereto (with only such changes as the issuing bank may reasonably require and as may be acceptable to Buyer in its reasonable discretion), issued by a U.S. commercial bank or other financial institution reasonably acceptable to Buyer, which is not an Affiliate of Seller, which has and maintains a Credit Rating of at least A- from S&P and A3 from Moody's, for the Security Period, permitting Buyer to draw the entire amount if either such amount is owed or such Letter of Credit is not renewed or replaced at least thirty (30) Business Days prior to its stated expiration date.

1.51. "Lien" means any mortgage, deed of trust, lien, pledge, charge, claim, security interest, easement, covenant, right of way, restriction, equity, or encumbrance of any nature whatsoever.

1.52. "Losses" means, with respect to the Non-Defaulting Party, an amount equal to the present value of the economic loss to the Non-Defaulting Party, if any (exclusive of Costs), resulting from the termination of this Agreement for the remaining Term, determined in a Commercially Reasonable Manner. Factors used in determining the economic loss or loss of economic benefit may include, without limitation, reference to information available either internally or supplied by third parties, including without limitation, quotations (either firm or indicative) of relevant rates, prices, yields, yield curves, or other relevant market data, comparable transactions, settlement prices or market prices for comparable transactions, forward price curves, production by comparable facilities, expected and historical production, all calculated for the remaining Term of the Agreement for the Product (inclusive of all components).

1.53. "Maintenance Outage" means the temporary operational removal of the Facility from service to perform work on specific components of the Facility, at a time when the Facility must be removed from service before the next Planned Outage in the interest of safety or the prevention of injury or damage to or undue wear and tear on the Facility or any component thereof.

1.54. "Moody's" means Moody's Investors Service, Inc. or any successor-rating agency thereto.

1.55. "MW" means megawatt.

1.56. "MWh" means megawatt-hour.

1.57. "Nameplate Capacity Rating" means the maximum generating capability of the Facility as measured at the Delivery Point (AC) as set forth in Exhibit 4.

1.58. "NERC" means the North American Electric Reliability Corporation. For purposes of this Agreement, NERC includes any applicable regional entity with delegated authority from NERC, such as the SERC Reliability Corporation (SERC).

1.59. "Non-Defaulting Party" is defined in Section 20.1.

1.60. "Party" or "Parties" is defined in the introductory paragraph hereto.

1.61. "Performance Assurance" means collateral in the form of either cash, Letter(s) of Credit, Surety Bond or a Guaranty that is acceptable to Buyer in its sole discretion, in each case that meets the requirements set forth in this Agreement (including, without limitation, Section 5) provided by Seller to Buyer for the benefit of Buyer pursuant to this Agreement, as credit support, adequate assurances, and security to secure Seller's performance under this Agreement.

1.62. "Permit" means any permit, license, registration, filing, certificate of occupancy, certificate of public convenience and necessity, approval, variance or any authorization from or by any Governmental Authority and pursuant to any Requirements of Law.

1.63. "Permitted Excuse to Perform" means that Seller's obligation to generate, deliver, and sell and Buyer's obligation to receive and purchase is excused and no damages will be payable by either Party to the other Party, if and to the extent such failure is due solely to any of the following occurrences: (a) an Emergency Condition and/or (b) a Force Majeure event.

1.64. "Person" means any individual, entity, corporation, general or limited partnership, limited liability company, joint venture, estate, trust, association or other entity or Governmental Authority.

1.65. "Planned Outage" means the temporary operational removal of the Facility from service to perform work on specific components in accordance with a pre-planned operations schedule, such as for a planned annual overhaul, inspections, or testing of specific equipment of the Facility.

1.66. "Product" means the Capacity of the Facility and Energy generated by the Facility.

1.67. "Protected Information" is defined in Section 16.1

1.68. "Prudent Utility Practice" means those practices, methods, equipment, specifications, standards of safety, and performance, as the same may change from time to time, as are commonly used in the construction, interconnection, operation, and maintenance of electric power facilities similar to the Facility, inclusive of delivery, transmission, and generation facilities and ancillaries, which in the exercise of good judgment and in light of the facts known at the time of the decision being made and activity being performed are considered: (i) good, safe, and prudent practices; (ii) are in accordance with generally accepted standards of safety, performance, dependability, efficiency, and economy in the United States; (iii) are in accordance with generally accepted standards of professional care, skill, diligence, and competence in the United States; and, (iv) are in compliance with applicable regulatory requirements and/or reliability standards. Prudent Utility Practices are not intended to be limited to the optimum practices, methods or acts to the exclusion of others, but rather are intended to include acceptable practices, methods and acts generally accepted in the energy generation and utility industry.

1.69. "PURPA" means the Public Utility Regulatory Policies Act of 1978, as amended, and as may be amended from time to time.

1.70. "PURPA Fuel Requirements" means the requirements set forth in 18 C.F.R. § 292.204 OR 205, as may be amended and/or restated.

1.71. "Qualifying Facility" means an electric generating facility that has been registered and certified by FERC as generator that qualifies for and meets the requirements set forth in PURPA, as it may be amended, and associated rules, regulations, orders.

1.72. "Rating Agency" or "Rating Agencies" - means the rating entities of S&P, Moody's or Fitch.

1.73. "Regulatory Event" is defined in Section 15.1.

1.74. "Required Approval" is defined in Section 6.

1.75. "Requirements of Law" means any applicable federal, state, and local law, statute, regulation, rule, code, ordinance, resolution, order, writ, judgment, decree or Permit enacted, adopted, issued or promulgated by any Governmental Authority, including, without limitation, (i) PURPA, (ii) those pertaining to the creation and delivery of the Product, (iii) those pertaining to electrical, building, zoning, occupational safety, health requirements or to pollution or protection of the environment, and (iv) principles of common law under which a person may be held liable for the release or discharge of any hazardous substance into the environment or any other environmental damage.

1.76. "Security Period" is defined in Section 5.6.

1.77. "Seller" shall have the meaning specified in the first paragraph of this Agreement.

1.78. "S&P" means Standard & Poor's Ratings Services, Inc. or any successor-rating agency thereto.

1.79. "Station Power" means the Energy generated by the Facility and, whether metered or unmetered, used on-site to supply the Facility's auxiliary load and parasitic load and/or for powering the electric generation equipment. Station Power shall not include any Energy generated by the Facility and stored for later delivery to the Buyer under this Agreement.

1.80. "Surety Bond" means a bond substantially in the form of Exhibit 10 attached hereto (with only such changes as the surety may reasonably require and as may be acceptable to Buyer in its reasonable discretion) issued by a surety reasonably acceptable to Buyer, which has and maintains an A.M. Best Rating of at least "A- VII", for the Security Period, and that promises to pay a specified amount to Buyer upon the occurrence of certain events, which include, but are not limited to, the failure of Seller to meet its obligations under this Agreement.

1.81. "System" means the transmission, distribution, and generation facilities that are owned, directed, managed, interconnected, controlled, or operated by Buyer and/or the Transmission Provider, including, without limitation, facilities to provide retail or wholesale service, substations, circuits, reinforcements, meters, extensions, and equipment associated with or connected to any interconnected facility or customer.

1.82. "System Operator" means the operators of the System that have the responsibilities for ensuring that the System as a whole or any part thereof operates safely, efficiently and reliably, including without limitation, the responsibilities to comply with any applicable operational or reliability requirements, the responsibilities to balance generation supply with customer load, the responsibilities to comply with any other regulatory obligation and the responsibilities to provide dispatch and curtailment instructions to generators supplying Energy to the System, and includes any person or entity delivering any such instruction to Seller. "System Operator Instruction" means any order, action, requirement, demand, or direction, from the System Operator in accordance with Prudent Utility Practice, and delivered to Seller in a non-discriminatory manner, to operate, manage, and/or otherwise maintain safe and reliable operations of the System, including, without limitation those undertaken and implemented by the System Operator, in its sole discretion based on relevant System factors and considerations, including any and all operating characteristics, maintenance requirements, operational limitations, reliability (including, without limitation, standing NERC regulations or standards), safety, dispatch, constraints, discharge, emissions limitations, compliance requirements, communications, resource ramp-up and ramp-down constraints and implementation, and any other System considerations, which may include, without limitation, an order or action to: (i) interconnect, disconnect, integrate, operate in parallel, or synchronize with the System, (ii) increase (based on generator characteristics and Prudent Utility Practices), reduce, or cease generation output to comply with standing NERC regulations or standards; (iii) respond to any transmission, distribution, or delivery limitations or interruptions; (iv) perform or cease performing any activity so as to operate in accordance with System limitations, including, without limitation, operational constraints that would require the System Operator to force offline or reduce generation output from reliability generators to accommodate generation by the Facility; and, (v) suspend or interrupt any operational activity for an Emergency Condition or Force Majeure event; provided however, a System Operator instruction in response to an Emergency Condition, Force Majeure event, or operational condition relating specifically to or created by the Facility shall not be deemed or considered discriminatory.

1.83. "Taxes" means all taxes, fees, levies, licenses or charges imposed by any Governmental Authority, together with any interest and penalties thereon.

1.84. "Term" is defined in Section 3.1.

1.85. "Transmission Provider" means the entity or division within Duke Energy Carolinas, LLC that will provide interconnection and/or electric distribution or transmission service to enable delivery of Energy generated by the Facility to Buyer, and any such entity or division will include any successor or replacement thereto, including without limitation, a consolidated control area or a regional transmission organization.

2. **Interpretation**

2.1. Intent. Unless a different intention clearly appears, the following terms and phrases shall be interpreted as follows: (a) the singular includes the plural and vice versa; (b) the reference to any Person includes such Person's legal and/or permitted successors and assignees, and reference to a Person in a particular capacity excludes such Person in any other capacity or individually; (c) the reference to any gender includes the other gender and the neuter; (d) reference to any document, including this Agreement, refers to such document as it may be amended, amended and restated, modified, replaced or superseded from time to time in accordance with its terms, or any successor document(s) thereto; (e) reference to any section or exhibit means such section or exhibit of this Agreement unless otherwise indicated; (f) "hereunder", "hereof", "hereto", "herein", and words of similar import shall be deemed references to this Agreement as a whole and not to any particular section or other provision; (g) "including" (and with correlative meaning "include") means "including without limitation" and when following any general statement or term, is not to be construed as limiting the general statement or term to the specific items or matters set forth or to similar items or matters, but rather as permitting the general statement or term to refer to all other items or matters that could reasonably fall within its broadest possible scope; (h) relative to the determination of any period of time, "from" means "from and including", "to" means "to but excluding" and "through" means "through and including"; (i) reference to any Requirements of Law refers to such Requirements of Law as it may be amended, modified, replaced or superseded from time to time, or any successor Requirements of Law thereto; and (j) all exhibits and attachments to this Agreement are hereby incorporated into this Agreement. Other terms used, but not defined in Section 1 or in the body of the Agreement, shall have meanings as commonly used in the English language and, where applicable, in the electric utility industry. Words not otherwise defined herein that have well known and generally accepted technical or trade meanings are used herein in accordance with such recognized meanings.

3. **Term and Termination**

3.1. Term. This Agreement shall be effective on the Effective Date and shall remain in full force and effect through December 31, 2025 ("Term"), unless terminated earlier pursuant to the provisions of this Agreement.

3.2. Termination and Survival. This Agreement may be terminated as provided for herein prior to the expiration of the Term. If this Agreement is terminated earlier than the expiration of the Term for any reason, including, without limitation, whether by its terms, mutual agreement, early termination, and/or event of default, such termination shall not relieve any Party of any obligation accrued or accruing prior to the effectiveness of such termination. Furthermore, any obligations, limitations, exclusions and duties which by their nature or the express terms of this Agreement extend beyond the expiration or termination of this Agreement, including, without limitation, provisions relating to compliance requirements, accounting, billing, billing adjustments, limitations or liabilities, dispute resolution, Performance Assurance, and any other provisions necessary to interpret or enforce the respective rights and obligations of the Parties hereunder, shall survive the expiration or early termination of this Agreement.

3.3. Condition Precedent for Buyer. It is a condition to the continuing obligations of each Party under this Agreement that the Commission shall have delivered to Buyer written notice that the Commission has: (i) completed its review of this Agreement; and, (ii) has accepted this Agreement for filing with the Commission without any modification, condition, suspension, or investigation. No later than twenty (20) Business Days after both Parties have executed this Agreement, Buyer will submit the Agreement for filing with the Commission. Seller agrees that Buyer will have sole discretion over all aspects of such submittal, including without limitation, the form and substance of the submittal, confidentiality, procedure, responding to any data requests, and providing any information to the Commission and the South Carolina Office of Regulatory Staff. Seller will not oppose or challenge the Commission's acceptance of this Agreement, and upon request by Buyer will promptly and fully support the Commission's acceptance of this Agreement without any modification, condition, suspension, or investigation. Buyer will make a good faith request that the Commission and the South Carolina Office of Regulatory Staff keep confidential the terms and conditions of this Agreement; *provided, however,* Seller agrees and acknowledges that information (including Protected Information) contained in this Agreement may become public by its submission to the Commission and the South Carolina Office of Regulatory Staff, and Seller hereby consents to any such disclosure, without any reservations and without any prior notice to Seller. If the Commission issues an order or any other directive to modify, condition, suspend, or investigate any aspect of this Agreement prior to its acceptance, then this Agreement will immediately terminate, and upon any such termination neither Party shall have any obligation, duty, or liability to the other Party under this Agreement; provided however, each Party will retain its respective rights under PURPA. Notwithstanding the foregoing, the Parties may mutually agree to enter into a new or modified agreement that is consistent with this Agreement to the maximum extent possible consistent with the Commission's order or directive. Buyer will provide notice to Seller after Buyer has received written notice of the Commission's determination in regards to Buyer's request that the Commission accept the Agreement for filing, and if such written notice from the Commission accepts this Agreement without any modification, condition, suspension, or investigation then Buyer will notify Seller that the condition precedent under this Section 3.3 has been satisfied.

4. **Purchase and Sale Obligations**

4.1. Delivery Period. The "Delivery Period" for the Product to be generated by the Facility and sold by Seller to Buyer shall be for all hours starting at 12:00:01 AM EPT on January 1, 2021 through 11:59:59 PM EPT on December 31, 2025 unless this Agreement is terminated earlier pursuant to its terms and conditions.

4.2. Contract Quantity. The "Contract Quantity" will be one hundred percent (100%) of the Capacity, output of Energy (including stored Energy) produced by the Facility, less that associated with Station Power.

4.2.1. Seller shall sell and deliver the Contract Quantity of the Product exclusively and solely to Buyer. Seller's failure to generate, sell, and deliver the Contract Quantity of the Product to Buyer will be excused with no damages payable to Buyer solely to the extent such failure is due to a Permitted Excuse to Perform.

4.2.2. Buyer shall have no obligation to receive, purchase, pay for, or pay any damages associated with not receiving the Product due to a Permitted Excuse to Perform. Buyer shall have full and exclusive rights to the Product (inclusive of all components), and will be entitled to full and exclusive use of the Product (inclusive of all components) for its purposes and in its sole and exclusive discretion.

4.2.3. The estimated monthly and annual Energy production of the Facility during the Delivery Period is set forth in Exhibit 1 hereto.

4.3. <u>Contract Price</u>. The "Contract Price" for the Product shall be the price corresponding to the relevant portion of the Delivery Period as set forth in Exhibit 2.

4.4. <u>Energy Delivery</u>. Seller shall deliver the Contract Quantity of the Product at the Delivery Point, and Seller shall be fully responsible for all costs, charges, expenses, and requirements associated with delivering the Product to the Delivery Point. Buyer will have no obligation to pay for any Product not delivered to the Delivery Point.

4.5. <u>Payment for Product</u>. During the Term of this Agreement, Buyer agrees to pay Seller the product of (i) the Contract Price for the Product, as applicable, multiplied by (ii) the amount of Energy delivered by Seller to Buyer at the Delivery Point during the Delivery Period.

4.6. <u>Transfer</u>. In no event will Seller procure or have the right to procure the Product or any component of the Product from any source other than the Facility for sale and delivery pursuant to this Agreement. Title to and risk of loss to the Product sold and delivered hereunder shall transfer from Seller to Buyer after completion of delivery at the Delivery Point. Seller shall be responsible for any costs and charges imposed on or associated with the Product and the delivery of the Product at the Delivery Point. Buyer shall be responsible for any costs or charges imposed on or associated with the Product after the Delivery Point.

5. **<u>Credit and Related Provisions</u>**.

5.1. <u>Performance Assurance Requirements</u>. No later than thirty (30) days after the Effective Date, Seller shall provide and deliver to Buyer Performance Assurance in the amount of [redacted] Thereafter, Seller shall continue to provide Buyer, for the benefit of Buyer, Performance Assurance in the amount set forth in the below table corresponding to the applicable period during the Term of this Agreement. Seller may request and Buyer may, subject to this Section 5.1, adjust the amount of such Performance Assurance within fifteen (15) Business Days of Seller's written request to coincide with the amount set forth in the below table. Seller's failure to provide the Performance Assurance and/or to maintain the Performance Assurance in the required amount and in full force and effect throughout the Term of this Agreement will be an Event of Default under this Agreement. Notwithstanding and without limiting the foregoing or the amounts set forth in the below table, Buyer may request additional credit support security from Seller pursuant to Section 5.1.

TABLE 1 – PERFORMANCE ASSURANCE

Contract Year	Amount
[redacted]	[redacted]
[redacted]	[redacted]
[redacted]	[redacted]
[redacted]	[redacted]

[redacted]	[redacted]

5.2. Unsecured Credit For Creditworthy Sellers. If Seller is Creditworthy and is not in default of any provisions under this Agreement the Seller shall be excused from the requirement to post Performance Assurance as required under Sections 5.1 above, as long as it remains Creditworthy. If at any time during the Term of this Agreement, Seller, or its Guarantor, ceases to be Creditworthy due to a change in its Credit Rating, then Seller will notify Buyer of such change in its credit status and shall provide (or replace) Performance Assurance to Buyer in the amounts required under Section 5.1 within five (5) Business Days after such change in its Credit Rating.

5.3. Financial Disclosures. If requested by Buyer, Seller shall timely provide to Buyer financial information of Seller as follows: (i) a copy of Seller's most recent quarterly report containing unaudited consolidated financial statements for such fiscal quarter signed and verified by an authorized officer of Seller attesting to their accuracy; and, (ii) within 120 days after the end of each fiscal year that this Agreement is effective a copy of Seller's annual report containing audited consolidated financial statements for such fiscal year. If Seller does not have audited financial statements, Seller shall deliver to Buyer financial statements in a form reasonably acceptable to Buyer and certified by a financial officer of Seller. All financial statements required hereunder shall be prepared in accordance with generally accepted accounting principles or other procedures with which Seller is required to comply with under applicable law. If information required under this Section 5.3 is available on a publicly available web site, then the delivery requirement shall be deemed to be satisfied.

5.4. Netting. If an Event of Default has not occurred and a Party is required to pay an amount to the other Party under this Agreement, then such amounts shall be netted, and the Party owing the greater aggregate amount shall pay to the other Party any difference between the amounts owed. All outstanding obligations to make payment under this Agreement may be netted, offset, set off, or recouped therefrom, and payment shall be owed as set forth above. Unless Buyer notifies Seller in writing (except in connection with a liquidation and termination) all amounts netted pursuant to this Section 5.4 shall not take into account or include any credit support, which may be in effect to secure Seller's performance under this Agreement. The netting set forth above, shall be without prejudice and in addition to any and all rights, liens, setoffs, recoupments, counterclaims and other remedies and defenses (to the extent not expressly herein waived or denied) that such Party has or to which such Party may be entitled arising from or out of this Agreement.

5.5. Set-off. In addition to any rights of set-off a Party may have as a matter of law or otherwise and subject to applicable law, upon the occurrence of an Event of Default, the Non-Defaulting Party shall have the right (but shall not be obligated to) without prior notice to the Defaulting Party or any other person to set-off any obligation of the Defaulting Party owed to the Non-Defaulting Party under this Agreement (whether or not matured, whether or not contingent and regardless of the currency, place of payment or booking office of the obligation) against any obligations of the Non-Defaulting Party owing to the Defaulting Party under this Agreement (whether or not matured, whether or not contingent and regardless of the currency, place of payment or booking office of the obligation). If any such obligation is unascertained, the Non-Defaulting Party may in a Commercially Reasonable Manner estimate that obligation and set-off in respect of the estimate, subject to the relevant Party providing an accounting and true-up to the other Party after the amount of the obligation is ascertained.

5.6. Performance Assurance Requirements. Seller shall ensure that the Performance Assurance in the required amount remains in full force, effect, outstanding, in the required amount, and for the duration required by this Agreement. Any Performance Assurance, as the amount thereof may be increased, decreased, and/or replenished pursuant to the terms of this Agreement, shall remain in full force, effect, and outstanding for the benefit of Buyer until sixty (60) days following the later of (a) the end of the Term or (b) the date on which Seller has fully satisfied all obligations to Buyer under this Agreement (the "Security Period"). If at any time any Performance Assurance fails to meet any of the requirements under this Agreement, Seller shall replace such Performance Assurance with alternative Performance Assurance that meets each of the requirements under this Agreement. Seller will be solely responsible for any and all costs incurred with providing and maintaining any Performance Assurance to the full amount required by this Agreement. If Seller fails to replace, renew, or otherwise maintain the required Performance Assurance as and when required by this Agreement, then Buyer: (a) shall be entitled to draw and retain hereunder the full amount of the Performance Assurance; (b) shall not be obligated to make any further payments to Seller until Seller shall have provided Buyer with the replacement Performance Assurance; and, (c) shall be entitled to give Seller notice of an Event of Default and pursue the termination rights and remedies provided for in this Agreement.

5.7. Grant of Security Interest. To secure its obligations and liabilities under this Agreement to Buyer, Seller hereby grants to Buyer a present and continuing first priority security interest in, and lien on (and right of netting and set-off against), and assignment of, all present and future Performance Assurance, including, without limitation, cash collateral and cash equivalent collateral and any and all proceeds resulting therefrom or the liquidation thereof, whether now or hereafter held by, on behalf of, or for the benefit of, Buyer; and, furthermore Seller agrees to take such actions as Buyer reasonably requires to perfect Buyer's first-priority security interest in, and lien on (and right of netting, recoupment, and set-off against), such Performance Assurance and any and all products and proceeds resulting therefrom or from the liquidation thereof, including without limitation proceeds of insurance. Upon or any time after the occurrence or deemed occurrence of an Event of Default or upon an Early Termination Date, Buyer (if it is the Non-Defaulting Party) may do any one or more of the following with respect to Seller (if it is the Defaulting Party): (i) exercise any of the rights and remedies of a secured party with respect to all Performance Assurance, including any such rights and remedies under law then in effect; (ii) exercise its rights of netting, recoupment, and set-off against any and all property of Seller in the possession of Buyer or its agent; (iii) draw on any outstanding applicable forms of Performance Assurance provided for the benefit of Buyer; and, (iv) liquidate all Performance Assurance then held by or for the benefit of Buyer free from any claim or right of any nature whatsoever of Seller, including any equity or right of purchase or redemption by Seller.

6. **Seller Compliance Requirements**.

6.1. Required Approvals. Seller shall at its sole cost and expense timely obtain, maintain, and comply with all Required Approvals (definition follows) during the Term of this Agreement. "Required Approvals" means all of the following:

6.1.1. All approvals and certifications that the Facility is a Qualifying Facility.

6.1.2. All required Permits, authorizations, certifications, and/or approvals from any Governmental Authority and under any Requirements of Law, including, without limitation, from the Commission or FERC, for Seller to construct, build, own, operate, and maintain the Facility and sell and deliver the Product to Buyer in accordance with the requirements under this Agreement.

6.2. Seller Covenants. Seller covenants and represents and warrants to Buyer as of the Effective Date of this Agreement and throughout the Term of this Agreement that: (a) Seller and the Transmission Provider have entered into a fully executed and currently effective Interconnection Agreement for the Facility; and (b) Seller has obtained all applicable certifications and/or approvals for the Facility from FERC. Seller agrees and acknowledges that Buyer has entered into this Agreement in reliance upon the covenants and warranties set forth above in this Section 6.2, and in the event of a breach or failure of or relating to any of the foregoing covenants and warranties, including without limitation for being false or misleading in any respect, then this Agreement will terminate upon Buyer providing Seller with thirty (30) day's written notice unless such breach or failure has been cured before the end of such thirty (30) day period. Seller will indemnify and hold Buyer harmless for any breach or failure relating to any of the foregoing covenants and warranties, notwithstanding anything else to the contrary in this Agreement.

6.3. Seller Requirements. Within twenty (20) Business Days of a written request from Buyer, Seller agrees to provide Buyer with all information, documents, and affidavits from a duly authorized representative of Seller certifying that the Facility fully complies with PURPA, including, without limitation, the PURPA Fuel Requirements.

7. **Seller's Facility Requirements.**

7.1. Seller Requirements. Seller covenants (except to the extent expressly set forth in this Agreement) that: the Facility shall be operated, controlled, maintained, and tested at Seller's sole cost and expense; the Facility shall be designed, constructed, operated (inclusive, without limitation, of control, metering equipment, and personnel and staffing levels), controlled, maintained, and tested by Seller to perform as required by this Agreement and in compliance with all applicable Requirements of Law and Prudent Utility Practice; the Facility shall be capable of supplying the Product in a safe and reliable manner consistent with the requirements of each applicable Requirements of Law and Prudent Utility Practice; and, that all contracts, agreements, arrangements, and/or Permits (including, without limitation, those necessary or prudent for the construction, ownership and operation of the Facility, such as land use permits, site plan approvals, real property titles and easements, environmental compliance and authorizations, grading and building permits, and contracts and/or licenses to obtain the underlying fuel, install and operate the Facility, and deliver and sell the Product of the Facility) shall be timely obtained and maintained by Seller, at Seller's sole cost and expense. Seller shall be responsible for arranging and obtaining, at its sole risk and expense, any station service required by the Facility. Seller shall construct, interconnect, operate, and maintain the Facility in accordance with Prudent Utility Practice. Seller shall be responsible for all costs, charges, and expenses associated with generating, scheduling, and delivering the Energy to Buyer.

7.2. Seller Responsibilities. Notwithstanding any provision of this Agreement to the contrary, the Seller agrees that: (a) Buyer shall have no responsibility whatsoever for any costs and/or Taxes relating to the design, development, construction, maintenance, ownership, or operation of the Facility (including but not limited to any financing costs, and any costs and/or Taxes imposed by any Governmental Authority on or with respect to emissions from or relating to the Facility, and including but not limited to costs and/or Taxes related to any emissions allowances *inter alia* for oxides for sulfur dioxide or nitrogen, carbon dioxide, and mercury), all of which shall be entirely at Seller's sole cost and expense; and, (b) any risk as to the availability of production tax benefits, investment tax credits, grants or any other incentives relating to the design, development, construction, maintenance, ownership, or operation of the Facility shall be borne entirely by Seller.

7.2.1. No Exclusions. If any production or investment tax credit, grants, subsidy, or any other similar incentives or benefit relating, directly or indirectly, to the Facility is unavailable or becomes unavailable at any time during the Term of this Agreement, Seller agrees that such event or circumstance will not: (a) constitute a Force Majeure or Regulatory Event; (b) excuse or otherwise diminish Seller's obligations hereunder in any way; and, (c) give rise to any right by Seller to terminate or avoid performance under this Agreement. Seller agrees that it will solely and fully bear all risks, financial and otherwise throughout the Term, associated with Seller's or the Facility's eligibility to receive any such tax treatment or otherwise qualify for any preferential or accelerated depreciation, accounting, reporting, or tax treatment.

7.3. Transmission Provider. Seller agrees and acknowledges that the Interconnection Agreement is (and will be) a separate agreement (or agreements) between Seller and Transmission Provider, and will exclusively govern all requirements and obligations between Seller and Transmission Provider. Only the Interconnection Agreement will govern all obligations and liabilities set forth in the Interconnection Agreement, and Seller shall be solely and fully responsible for all costs and expenses for which Seller is responsible for under the Interconnection Agreement. Seller shall comply with all Interconnection Instructions. Nothing in the Interconnection Agreement, nor any other agreement between Seller on the one hand and Transmission Provider on the other hand, nor any alleged event of default thereunder, shall affect, alter, or modify the Parties' rights, duties, obligation, and liabilities under this Agreement. This Agreement shall not be construed to create any rights between Seller and the Transmission Provider, and the terms of this Agreement are not (and will not) be binding upon the Transmission Provider. Seller agrees and acknowledges that Seller's performance under this Agreement depends on Seller's performance under the Interconnection Agreement, and Seller hereby grants Buyer the right and entitlement to obtain information from the Transmission Provider in regard to Seller's performance under the Interconnection Agreement.

7.4. System Operations. Seller agrees and acknowledges that the System Operator will be solely responsible for its functions, and that nothing in this Agreement will be construed to create any rights between Seller and the System Operator. Seller agrees that it is obligated to engage in interconnected operations with Buyer and the System, and Seller agrees to fully comply with all System Operator Instructions.

7.5. Insurance Obligations. Commencing on the first day of the Delivery Period and continuing until the termination of this Agreement, and at no additional cost to Buyer, Seller shall maintain or cause to be maintained by contracted parties at the Facility, occurrence form insurance policies as follows: (a) Workers' Compensation in accordance with the statutory requirements of the state in which the Services are performed and Employer's Liability Insurance of not less than $500,000 each accident/employee/disease; (b) Commercial General Liability Insurance having a limit of at least $1,000,000 per occurrence/$2,000,000 in the aggregate for contractual liability, personal injury, bodily injury to or death of persons, and damage to property, premises and operations liability and explosion, collapse, and underground hazard coverage; (c) Commercial/Business Automobile Liability Insurance (including owned (if any), non-owned or hired autos) having a limit of at least $1,000,000 each accident for bodily injury, death, property damage and contractual liability; (d) Property Damage insurance on the Facility written on an all risk of loss basis; and, (e) if Seller will be handling or the Facility will have present environmentally regulated or hazardous materials, Pollution Legal Liability, including coverage for sudden/accidental occurrences for bodily injury, property damage, environmental damage, cleanup costs and defense with a minimum of $1,000,000 per occurrence (claims-made form acceptable with reporting requirements of at least one (1) year). All insurance policies provided and maintained by Seller or applicable party shall: (i) be underwritten by insurers which are rated A.M. Best "A- VII" or higher; (ii) specifically include Buyer as additional insured's, excluding, however, for Worker's Compensation/Employer's Liability and Property Damage insurance; (iii) be endorsed to provide, where permitted by law, waiver of any rights of subrogation against Buyer; and (iv) provide that such policies and additional insured provisions are primary and without right of contribution from any other insurance, self-insurance or coverage available to Buyer. Any deductibles or retentions shall be the sole responsibility of Seller or the applicable party. Seller's compliance with these provisions and the limits of insurance specified herein shall not constitute a limitation of Seller's liability pursuant to this Agreement. Any failure to comply with and these provisions shall not be deemed a waiver of any rights of Buyer under this Agreement or with respect to any insurance coverage required hereunder. Buyer at its sole discretion may request Seller to provide a copy of any or all of its required insurance policies, including endorsements in which Buyer is included as an additional insured for any claims filed relative to the Facility or this Agreement.

8. **Facility Performance Requirements**

8.1. Planned Outages. No later than fifteen (15) Business Days prior to the end of each year during the Term, Seller shall provide to Buyer a Planned Outage schedule for the upcoming year. Seller shall provide Buyer with reasonable advance notice of any material change in the Planned Outage schedule. Seller shall determine the number and extent of Planned Outages in a Commercially Reasonable Manner recognizing that it is the intent of the Parties to maximize production of the Facility and to such extent Seller shall be excused from providing the Product during such Planned Outage(s). Unless both Parties expressly agree otherwise, any Planned Outage shall only occur during the months of March, April, May, September, October, or November.

8.2. Maintenance Outages. If Seller needs or desires to schedule a Maintenance Outage of the Facility, Seller shall notify Buyer, as far in advance as reasonable and practicable under the circumstances, of such proposed Maintenance Outage, and the Parties shall plan such outage to mutually accommodate the reasonable requirements of Seller and delivery expectations of Buyer. Notice of a proposed Maintenance Outage shall include the expected start date of the outage, the amount of output of the Facility that will not be available and the expected completion date of the outage. Buyer may request reasonable modifications in the schedule for the outage. Subject to its operational and maintenance needs, Seller shall comply with such requests to reschedule a Maintenance Outage. If rescheduled, Seller shall notify Buyer of any subsequent changes in the output that will not be available to Buyer and any changes in the Maintenance Outage completion date. As soon as practicable, any such notifications given orally shall be confirmed in writing.

8.3. Notice. Seller shall promptly provide to Buyer an oral report of all outages, Emergency Conditions, de-ratings, major limitations, or restrictions affecting the Facility, which report shall include the cause of such restriction, amount of generation from the Facility that will not be available because of such restriction, and the expected date that the Facility will return to normal operations. Seller shall update such report as necessary to advise Buyer of any material changed circumstances relating to the aforementioned restrictions. As soon as practicable, all oral reports shall be confirmed in writing. Seller shall promptly dispatch personnel to perform the necessary repairs or corrective action in an expeditious and safe manner in accordance with Prudent Utility Practice.

8.4. Performance. Seller shall fully satisfy the PURPA Fuel Requirements during the Term of this Agreement and shall act in a Commercially Reasonable Manner to maximize the output of the Facility in a safe manner to generate the Product and to minimize the occurrence, extent, and duration of any event adversely affecting the generation of the Product, in each case consistent with Prudent Utility Practice.

8.5. Output Requirement. Commencing on the first day of the Delivery Period and for each year during the Delivery Period, Seller shall deliver to Buyer no less than seventy percent (70%) of the Expected Annual Output averaged over two consecutive calendar years on a rolling basis during the Delivery Period (the "Net Output Requirement"). Where a Permitted Excuse to Perform adversely affects actual generation output of the Facility, the Net Output Requirement shall be reduced by the amount of Energy not generated due to the Permitted Excuse to Perform; provided, however, Seller agrees that it must demonstrate to Buyer, in Buyer's Commercially Reasonable discretion, that the Facility's generation output was actually reduced due to a Permitted Excuse to Perform. Buyer's sole remedy for Seller's failure to deliver the Net Output Requirement for any period of two consecutive years shall be to receive a credit against the Contract Price for each month during the immediately following full calendar year. The foregoing monthly credit to Buyer shall be determined by (a) multiplying (i) the difference between the Net Output Requirement and the actual Energy (expressed in MWh) delivered by Seller and received by Buyer during the applicable time period by (ii) 50% of average Contract Price for Energy delivered to Buyer in the previous 12 months and (b) then dividing the amount calculated by (a) above by twelve (12). If Seller fails to satisfy the Net Output Requirement for any two-year period, for the purpose of determining compliance with the Net Output Requirement in the next rolling two-year period, then the amount of Energy generated in the first year of such two-year rolling period will be deemed to be the higher of (i) seventy percent (70%) of the Expected Annual Output for such year, or (ii) the actual amount of Energy generated by the Facility in such year.

8.6. System Operator Instructions and Payments. Seller shall cooperate with Buyer to immediately and fully comply with all System Operator Instructions, and Seller hereby authorizes and grants to Buyer the right to control the Facility in any manner necessary to enable Buyer to take any actions required to implement or effectuate any System Operator Instruction. If the System Operator requires the Facility to reduce or stop the generation of Energy pursuant to a System Operator Instruction (such reductions or cessations of Energy, the "Dispatch Down" of production by the Facility), Buyer shall pay Seller the amount set forth below if, and only if: (i) the Facility was operating at the time of the Dispatch Down instruction, and was required to and actually reduced Energy production pursuant to a Dispatch Down instruction; (ii) the actual reduction of Energy generation by the Facility due to Dispatch Down instructions exceeds [redacted] MWh (the "Dispatch Down Payment Threshold") in a calendar year (January – December); and, (iii) the Dispatch Down instruction was not due to an Emergency Condition or Force Majeure event (the foregoing items (i)-(iii), collectively, the "Dispatch Down Payment Event").

8.6.1. For each calendar year, after a Dispatch Down Payment Event occurs during that calendar year, Buyer shall pay Seller starting with the [redacted] MWh, at the Contract Price for the Product multiplied by the units of Product not generated due to the Dispatch Down instruction(s).

8.6.2. Estimation Methodology. The Parties shall determine in a Commercially Reasonable Manner the quantity of Energy that could not be generated due to compliance with and implementation of the Dispatch Down instruction(s) based on: (i) the time and duration of the Dispatch Down period; and (ii) the Facility design described in Exhibit 4, performance capability, and historic performance, using a modeling program agreed upon by the parties in a Commercially reasonable manner (the "Estimation Methodology").

8.6.3. In the event Seller demonstrates that a Dispatch Down instruction issued by the System Operator does not fall within the definition of a System Operator Instruction and that the Facility actually reduced Energy production pursuant to such Dispatch Down instruction, Seller shall be entitled to a compensatory payment from Buyer, calculated using the Estimation Methodology, in the amount of the Contract Price for the Product not generated due to compliance with the Dispatch Down instruction (starting with the first MWh of Product not generated) as Seller's sole and exclusive payment and remedy for its compliance with such instruction.

8.7. Energy Storage. If the Facility is to be equipped with battery storage or other energy storage device (the "Storage Resource"), the Storage Resource shall be identified in Exhibit 4 attached to this Agreement, which shall be subject to Buyer's final approval, not to be unreasonably withheld. In all cases the Storage Resource must be charged solely by the Facility and the use of any Storage Resource shall be operated and equipped in accordance with the System Operator's Energy Storage Protocol, a copy of which is attached hereto as Exhibit 9, as may be modified from time to time by the System Operator (the "Energy Storage Protocol") as approved by the Commission.

9. **Information Requirements**

9.1. Accounting Information. Generally Accepted Accounting Principles ("GAAP") and SEC rules can require Buyer to evaluate various aspects of its economic relationship with Seller, e.g., whether or not Buyer must consolidate Seller's financial information. To evaluate if certain GAAP requirements are applicable, Buyer may need access to Seller's financial records and personnel in a timely manner. In the event that Buyer determines that consolidation or other incorporation of Seller's financial information is necessary under GAAP, Buyer shall require the following for each calendar quarter during the term of this Agreement, within 90 days after quarter end: (a) complete financial statements, including notes, for such quarter on a GAAP basis; and, (b) financial schedules underlying the financial statements. Seller shall grant Buyer access to records and personnel to enable Buyer's independent auditor to conduct financial audits (in accordance with GAAP standards) and internal control audits (in accordance with Section 404 of the Sarbanes-Oxley Act of 2002). Any information provided to Buyer pursuant to this section shall be considered confidential in accordance with the terms of this

Agreement and shall only be disclosed, as required by GAAP, on an aggregate basis with other similar entities for which Buyer has power purchase agreements.

9.2. Facility Information. Seller shall promptly provide to Buyer information requested by Buyer to verify any amounts of delivered Product, or to otherwise audit the Product delivered to Buyer. Seller shall, within ten (10) Business Days of electronic or written request provide Buyer with any other information germane to this Agreement and/or Seller's performance under and compliance with this Agreement, requested by Buyer in its Commercially Reasonable discretion.

9.3. Other Information. Seller shall provide to Buyer all information, instruments, documents, statements, certificates, and records relating to this Agreement and/or the Facility as reasonable requested by Buyer concerning any administrative, regulatory, compliance, or legal requirements reasonably determined by Buyer to fulfill any Requirements of Law, regulatory reporting requirements or otherwise relating to any request by any Governmental Authority.

9.4. Forecasts. Seller shall prepare and provide Buyer with the Facility's forecasted Energy production. These non-binding forecasts of production will be determined and prepared in a Commercially Reasonable Manner with the intent of being as accurate as possible. Seller shall update a forecast any time information becomes available indicating a material change in the forecast relative to the most previously provided forecast.

9.4.1. Year-Ahead Forecasts. Seller shall, by December 1 of each year during the Term (except for the last year of the Term), provide Buyer with a forecast of each month's average-day Energy production from the Facility, by hour, for the following calendar year. This forecast shall include an expected range of uncertainty based on historical operating experience. Seller shall update the forecast for each month at least five (5) Business Days before the first Business Day of such month.

9.4.2. Week-Ahead Forecasts. By 0800 EPT on the Friday preceding the immediately upcoming week of delivery, Seller shall provide Buyer with a daily forecast of deliveries for the upcoming week (Monday through Sunday).

9.4.3. Day-Ahead Forecasts. By 0500 EPT on the calendar day immediately preceding the day of delivery, Seller shall provide Buyer with an hourly forecast of deliveries for each hour of the next seven (7) days. In the event that Seller has any information or other Commercially Reasonable basis to believe that the production from the Facility on any day will be materially lower or higher than what would otherwise be expected based on the forecasts provided, then Seller will inform Buyer of such circumstance by 0500 EPT on the preceding Business Day.

9.4.4. Communication. Seller shall communicate forecasts in a form, template, substance, and manner as requested by Buyer (e.g. Excel template), which form, template, substance, and manner may be modified by Buyer from time to time. Forecasts shall be transmitted by email (to be sent to: RenewableEnergyForecast@duke-energy.com) or by other media (e.g. website upload), as Buyer may instruct Seller from time to time.

9.4.5. History. Seller shall prepare and provide Buyer with the Facility's historical Energy production. The historical production will be determined and prepared by Seller in a Commercially Reasonable Manner with the intent of being as accurate as reasonably possible. Seller shall update any correction to the history any time information becomes available.

Daily History. By 0500 EPT on the Business Day immediately following the day of delivery, Seller shall provide Buyer with an hourly profile of deliveries for each hour of the previous seven days.

9.4.6. History Communication. Seller shall communicate history in a form, template, substance, and manner as requested by Buyer (e.g. Excel template), which form, template, substance, and manner may be modified by Buyer from time to time. The History shall be transmitted by email (to be sent to: RenewableEnergyForecast@duke-energy.com) or by other media (e.g. website upload), as Buyer may instruct Seller from time to time.

10. **Metering**

10.1. Billing Meter. Seller shall maintain its arrangement with the Transmission Provider for such meters and metering equipment as are necessary to measure the Energy delivered and received in accordance with the terms and conditions of this Agreement (the "Billing Meter"). Buyer shall provide to Seller the reasonable allowable accuracy limits relating to the performance of the Billing Meter, and Seller shall arrange with Transmission Provider to install and operate a Billing Meter that meets the allowable accuracy limits. Seller shall be responsible for paying the Transmission Provider for all costs relating to the Billing Meter, including, without limitation, its procurement, installation, operation, calibration, and maintenance. Seller shall ensure in its arrangement with the Transmission Provider for the Billing Meter to include communication equipment that enables Buyer to access and read the meter from a remote location. Seller hereby grants Buyer with rights to physically access the Billing Meter. Seller shall provide Buyer (at Seller's cost) with appropriate telephonic/electronic communication to allow Buyer to remotely read the meter. Seller may, at its own expense, install and maintain additional metering equipment for purposes of monitoring, recording or transmitting data relating to its sale of Energy from the Facility, so long as such equipment does not interfere with the Billing Meter. Seller shall arrange with the Transmission Provider to test the Billing Meter at regular intervals. Seller shall also arrange for either Party to have the right to request and obtain, at reasonable intervals and under reasonable circumstances, additional/special tests of the Billing Meter. The Party making such request for the test shall incur the costs associated with such test.

11. **Billing Period and Payment**

11.1. Billing Period. Subject to Seller authorizing Transmission Provider to provide Buyer with electronic access to the Billing Meter, Buyer shall read/obtain data from the Billing Meter at regular intervals, which shall be not less than twenty-seven (27) consecutive days and not more than thirty-three (33) consecutive days (each, a "Billing Period") except for the initial and final billing periods hereunder which may be shorter to permit the readings to otherwise coincide with calendar months. Within twenty-five (25) days after reading/obtaining data from the Billing Meter, Buyer shall provide Seller with an invoice detailing the amount of Product delivered during the relevant Billing Period and the associated amount owed by Buyer to Seller for the Product, subject to Seller cooperating with Buyer and providing Buyer with such information and/or data that Buyer may request to accurately prepare the invoice. Buyer shall pay Seller the invoiced amounts for each Billing Period. Payment by Buyer shall be due thirty (30) days after the invoice date. If such amounts are not paid by the deadline, they shall accrue interest at the Interest Rate from the applicable due date until the date paid. Amounts not paid by such deadline shall accrue interest at the Interest Rate from the original due date until the date paid in accordance with this Agreement.

11.2. Meter Malfunction. In the event the Billing Meter fails to register accurately within the allowable accuracy limits as set forth above, then for purposes of preparing (or adjusting) any affected invoice Buyer shall adjust the amount of measured Energy for the period of time the Billing Meter was shown to be in error. If the time the Billing Meter became inaccurate can be determined, then the adjustment to the amount of measured Energy shall be made for the entire time from the time that the Billing Meter became inaccurate until the recalibration of the Billing Meter. If the time the Billing Meter became inaccurate cannot be determined, then the Billing Meter shall be deemed to have failed to register accurately for fifty percent (50%) of the time since the date of the last calibration of the Billing Meter.

11.3. Out-of-Service. If the Billing Meter is out of service, then for purposes of preparing any affected invoice, the Parties shall negotiate in good faith to determine an estimate of the amount of Energy delivered during the relevant Billing Period. Seller's meter (if any), may be used to establish such estimate, if both Parties agree. If, within twenty (20) days after the date that the Billing Meter is read as set forth above, the Parties have not reached agreement regarding an estimate of the amount of Energy delivered during the relevant Billing Period, then the amount of Energy delivered during the relevant Billing Period shall be determined using the Estimation Methodology.

11.4. Errors. If any overcharge or undercharge in any form whatsoever shall at any time be found for an invoice, and such invoice has been paid, the Party that has been paid the overcharge shall refund the amount of the overcharge to the other Party, and the Party that has been undercharged shall pay the amount of the undercharge to the other Party, within forty-five (45) days after final determination thereof; provided, however, that no retroactive adjustment shall be made for any overcharge or undercharge unless written notice of the same is provided to the other Party within a period of twenty-four (24) months from the date of the invoice in which such overcharge or undercharge was first included. Any such adjustments shall be made with interest calculated at the Interest Rate from the date that the undercharge or overcharge actually occurred.

11.5. Invoice/Payment Dispute. If a Party in good faith reasonably disputes the amount set forth in an invoice, charge, statement, or computation, or any adjustment thereto, such Party shall provide to the other Party a written explanation specifying in detail the basis for such dispute. The Party disputing the invoice, if it has not already done so, shall pay the undisputed portion of such amount no later than the applicable due date. If the Parties are thereafter unable to resolve the dispute through the exchange of additional documentation, then the Parties shall pursue resolution of such dispute according to the dispute resolution and remedy provisions set forth in the Agreement. Notwithstanding any other provision of this Agreement to the contrary, if any invoice, statement charge, or computation is found to be inaccurate, then a correction shall be made and payment (with applicable interest) shall be made in accordance with such correction; provided, however, no adjustment shall be made with respect to any invoice, statement, charge, computation or payment hereunder unless a Party provides written notice to the other Party questioning the accuracy thereof within twenty-four (24) months after the date of such invoice, statement, charge, computation, or payment.

12. **Audit Rights**

12.1. Process. Buyer shall have the right, at its sole expense and during normal business hours, without Seller requiring any compensation from Buyer, to examine and copy the records of Seller to verify the accuracy of any invoice, statement, charge or computation made hereunder or to otherwise verify Seller's performance under this Agreement, including, without limitation, verifying that the delivered Product complies with the Agreement.

12.2. Survival. All audit rights shall survive the expiration or termination of this Agreement for a period of twenty-four (24) months after the expiration or termination. Seller shall retain any and all documents (including, without limitation, paper, written, and electronic) and/or any other records relating to this Agreement and the Facility for a period of twenty-four (24) months after the termination or expiration of this Agreement.

13. **Taxes**

13.1. Seller. Seller shall be liable for and shall pay Buyer, or Seller shall reimburse Buyer if Buyer has paid or cause to be paid, all Taxes imposed by a Governmental Authority on or with respect to the Product delivered hereunder and arising prior its delivery to and at the Delivery Point (including ad valorem, franchise or income taxes which are related to the sale of the Product by Seller to Buyer and are, therefore, the responsibility of Seller). Seller shall indemnify, defend, and hold harmless Buyer from any liability for such Taxes, including related audit and litigation expenses.

13.2. Buyer. Buyer shall be liable for and shall pay Seller, or Buyer shall reimburse Seller if Seller has paid or caused to by paid, all Taxes imposed by a Governmental Authority on or with respect to the Product delivered hereunder and arising after the Delivery Point (other than ad valorem, franchise or income taxes which are related to the sale of the Product by Seller to Buyer and are, therefore, the responsibility of Seller). Buyer shall indemnify, defend, and hold harmless Seller from any liability for such Taxes, including related audit and litigation expenses.

13.3. Remittances. In the event Seller is required by any Requirements of Law to remit or pay Taxes that are Buyer's responsibility hereunder, Seller may request reimbursement of such payment from Buyer by sending Buyer an invoice, and Buyer shall include such reimbursement in the next monthly invoice and Buyer shall remit payment thereof. Conversely, if Buyer is required by any Requirements of Law to remit or pay Taxes that are Seller's responsibility hereunder; Buyer may deduct the amount of any such Taxes from the sums otherwise due to Seller under this Agreement. Any refunds or remittances associated with such Taxes shall be administered in accordance with Section 11.1.

13.4. Documentation. A Party, upon written request of the other Party, shall promptly provide a certificate of exemption or other reasonably satisfactory evidence of exemption if such Party is exempt from any Tax. Nothing herein shall obligate a Party to pay or be liable to pay any Taxes from which it is exempt pursuant to applicable law.

14. **Force Majeure**

14.1. Definition. "Force Majeure" means: (A) war, riots, floods, hurricanes, tornadoes, earthquakes, lightning, ice-storms, excessive winds, and other such extreme weather events and natural calamities; (B) explosions or fires arising from lightning or other natural causes unrelated to acts or omissions of the Party; (C) insurrection, rebellion, nationwide strikes; (D) an act of god or other such significant and material event or circumstance which prevents one Party from performing a material and significant obligations hereunder, which such event or circumstance was not anticipated as of the Effective Date, is not within the Commercially Reasonable control of, or the result of the negligence of such claiming Party, and which, by the exercise of Commercially Reasonable Efforts, the claiming Party is unable to overcome or avoid or cause to be avoided; and (E) delays in obtaining goods or services from any subcontractor or supplier to the extent caused by the occurrence of any of the events described in the immediately preceding subparts (A) through (D). The acts, events or conditions listed in subparts (A) through (E) above shall only be deemed a Force Majeure if and to the extent they actually and materially delay or prevent the performance of a Party's obligations under this Agreement and: (i) are beyond the reasonable control of the Party, (ii) are not the result of the willful misconduct or negligent act or omission of such Party (or any person over whom that Party has control), (iii) are not an act, event or condition that reasonably could have been anticipated, or the risk or consequence of which such Party has assumed under the Agreement; and, (iv) cannot be prevented, avoided, or otherwise overcome by the prompt exercise of Commercially Reasonable diligence by the Party (or any Person over whom that Party has control).

14.1.1. Notwithstanding anything to the contrary herein, Force Majeure will *not* include the following: (a) any strike or labor dispute of the employees of either Party or any subcontractor that is not part of a regional or nationwide strike or labor dispute; (b) any difficulty in obtaining or maintaining sufficient, or appropriately skilled, personnel to perform the work in accordance with the requirements of this Agreement; (c) normal wear and tear or obsolescence of any equipment; (d) Buyer's inability to economically use or resell the Product delivered and purchased hereunder; (e) Seller's ability to sell the Product (or any component of the Product) at a more advantageous price; (f) loss by Seller of any contractual arrangement; (g) any Regulatory Event; (h) loss or failure of Seller's supply of the Product or inability to generate the Product that is not caused by an independent Force Majeure event; (i) the cost or availability or unavailability of fuel, solar energy, wind, or motive force, as applicable, to operate the Facility; (j) economic hardship, including, without limitation, lack of money or financing or Seller's inability to economically generate the Product or operate the Facility; (k) any breakdown or malfunction of Facility equipment (including any serial equipment defect) that is not directly caused by an independent event of Force Majeure; (l) the imposition upon Seller of costs or taxes allocated to Seller hereunder or Seller's failure to obtain or qualify for any tax incentive, preference, or credit; (m) delay or failure of Seller to obtain or perform any Permit; (n) any delay, alleged breach of contract, or failure under any other agreement or arrangement between Seller and another entity, including without limitation, an agent or sub-contractor of Seller (except as a direct result of an event of Force Majeure defined in 14.1(D)); (o) Seller's failure to obtain, or perform under, the Interconnection Agreement, or its other contracts and obligations to Transmission Provider; or (p) increased cost of electricity, steel, materials, equipment, labor, or transportation.

14.2. Event. If either Party is rendered unable by Force Majeure to carry out, in whole or in part, any material obligation hereunder, such Party shall provide notice and reasonably full details of the event to the other Party as soon as reasonably practicable after becoming aware of the occurrence of the event (but in no event later than three (3) Business Days of the initial occurrence of the event of Force Majeure). Such notice may be given orally but shall be confirmed in writing as soon as practicable thereafter (and in any event within ten (10) days of the initial occurrence of the event of Force Majeure); provided however, a reasonable delay in providing such notice shall not preclude a Party from claiming Force Majeure but only so long as such delay does not prejudice or adversely affect the other Party.

14.3. Effect. Subject to the terms and conditions of Section 14, for so long as the event of Force Majeure is continuing, the specific obligations of the Party that are demonstrably and specifically adversely affected by the Force Majeure event, shall be suspended to the extent and for the duration made necessary by the Force Majeure and will not be deemed to be an Event of Default to the extent resulting therefrom. The burden of proof for demonstrating that an event of Force Majeure has occurred shall be on the Party claiming relief under this Agreement based on an event of Force Majeure.

14.4. Remedy. The Party claiming Force Majeure shall act in a Commercially Reasonable Manner to remedy the Force Majeure as soon as practicable and shall keep the other Party advised as to the continuance of the Force Majeure event. If a bona fide Force Majeure event persists for a continuous period of one hundred eighty (180) days, then the Party not claiming Force Majeure shall have the right, in its sole and unfettered discretion, to terminate this Agreement upon giving the other Party ten (10) Business Days advance written notice; provided, however, that where the Force Majeure event cannot be remedied within one hundred eighty (180) days and the claiming Party can demonstrate to the non-claiming Party its intention and ability to implement a Commercially Reasonable plan to remedy such Force Majeure event within an additional one hundred eighty (180) days after the initial one hundred eighty (180) day period and the claiming Party uses Commercially Reasonable efforts to implement such plan, the non-claiming Party shall not have the right to terminate the Agreement until the expiration of such additional one hundred eighty (180) day period.

14.5. Termination. Unless otherwise agreed upon by the Parties in writing and in each Party's sole discretion, upon the expiration of the periods set forth above in Sections 14.4, this Agreement may be terminated without any further notice and further opportunity to cure any non-performance. Upon termination becoming effective pursuant to a Force Majeure under Section 14, neither Party will have any liability to the other Party or recourse against the other Party, other than for amounts arising prior to termination. Notwithstanding the claimed existence of a Force Majeure event or any other provisions of this Agreement, nothing herein shall relieve any Party from exercising any right or remedy provided under this Agreement with respect to any liability or obligation of the other Party that is not excused or suspended by the Force Majeure event, including, without limitation, the right to liquidate and early terminate the Agreement for any Event of Default not excused by the Force Majeure event. Nothing herein shall be construed so as to obligate any Party to settle any strike, work stoppage or other labor dispute or disturbance or to make significant capital expenditures, except in the sole discretion of the Party experiencing such difficulty.

15. **Change in Law**

15.1. Regulatory Event. A "Regulatory Event" means one or more of the following events:

15.1.1. Illegality. After the Effective Date, due to the adoption of, or change in, any applicable Requirements of Law or in the interpretation thereof by any Governmental Authority with competent jurisdiction, it becomes unlawful for a Party to perform any material obligation under this Agreement.

15.1.2. Adverse Government Action. After the Effective Date, there occurs any adverse material change in any applicable Requirements of Law (including material change regarding a Party's obligation to sell, deliver, purchase, or receive the Product) and any such occurrence renders illegal or unenforceable any material performance or requirement under this Agreement.

15.2. Process. Upon the occurrence of a Regulatory Event the Party affected by the Regulatory Event may notify the other Party in writing of the occurrence of a Regulatory Event, together with details and explanation supporting the occurrence of a Regulatory Event. Upon receipt of such notice, the Parties agree to undertake, during the thirty (30) days immediately following receipt of the notice, to negotiate such modifications to reform this Agreement to remedy the Regulatory Event and attempt to give effect to the original intention of the Parties. Upon the expiration of the 30-day period, if the Parties are unable to agree upon modifications to the Agreement that are acceptable to each Party, in each Party's sole discretion, then either Party shall have the right, in such Party's sole discretion, to terminate this Agreement with a 30-day advance written notice.

16. **Confidentiality**

16.1. Protected Information. Except as otherwise set forth in this Agreement, neither Party (the "Receiving Party") shall, without the other Party's (the "Disclosing Party") prior written consent, disclose any Protected Information (as defined below) of the Disclosing Party to any third person (other than the Party's employees, affiliates, advisors, counsel, accountants, and current and prospective lenders and investors in the Facility who have a need to know such information, have agreed to keep such terms confidential, and for whom the Party shall be liable in the event of a breach of such confidentiality obligation), at any time during the Term or for five (5) years after the expiration or early termination of this Agreement. As used herein the term "Protected Information" means (a) this Agreement, (b) any proprietary information of the Disclosing Party disclosed in connection with this Agreement, including without limitation, proposals and negotiations whether disclosed prior to or after the date hereof that have been clearly marked as confidential or proprietary. Notwithstanding anything to the contrary herein, in no event will Protected Information include the concept of constructing or providing energy from a power plant, using any specific fuel source, in any specific location. Each Party shall be entitled to all remedies available at law or in equity (including but not limited to specific performance and/or injunctive relief,) to enforce, or seek relief in connection with, this confidentiality obligation. Notwithstanding any other provision of this Agreement, any claim related to or arising out of any confidentiality obligations herein may be brought directly in any state or federal court of competent jurisdiction in Greenville County, South Carolina, in accordance with Section 26.5 of this Agreement, and shall not be subject to dispute resolution or arbitration pursuant to Section 23 of this Agreement.

16.2. Non-Confidential Information. Protected Information does not include information: (i) that is or becomes available to the public other than by disclosure of Receiving Party in breach of this Agreement; (ii) known to Receiving Party prior to its disclosure; (iii) available to Receiving Party from a third party who is not bound to keep such information confidential; or, (iv) independently developed by the Receiving Party without reliance upon the Protected Information.

16.3. Return of Confidential Information. Upon request of Disclosing Party, Receiving Party shall either (i) return the Protected Information, including all copies, or (ii) destroy the Protected Information, including all copies, and present written assurances of the destruction to Disclosing Party. Notwithstanding the foregoing, both Parties acknowledge that Protected Information transferred and maintained electronically (including e-mails) may be automatically archived and stored by Receiving Party on electronic devices, magnetic tape, or other media for the purpose of restoring data in the event of a system failure (collectively, "Back-Up Tapes"). Notwithstanding the terms of this Agreement, in no event shall Receiving Party be required to destroy Protected Information stored on Back-Up Tapes; provided, however, any Protected Information not returned or destroyed pursuant to this Section shall be kept confidential for the duration of its existence. Furthermore, the Receiving Party may retain one (1) copy of such Protected Information in Receiving Party's files solely for audit and compliance purposes for the duration of its existence; provided, however, such Protected Information shall be kept confidential for the duration of its existence in accordance with the terms of this Agreement.

16.4. Required Disclosures. Notwithstanding the confidentiality requirements set forth herein, a Party may disclose Protected Information to comply with PURPA, request of any Governmental Authority, applicable Requirements of Law, or any exchange, control area or System operator rule, in response to a court order, or in connection with any court or regulatory proceeding. Such disclosure shall not terminate the obligations of confidentiality unless the Protected Information falls within one of the exclusions of this Agreement. To the extent the disclosure of Protected Information is requested or compelled as set forth above, the Receiving Party agrees to give Disclosing Party reasonable notice of any discovery request or order, subpoena, or other legal process requiring disclosure of any Protected Information. Such notice by the Receiving Party shall give Disclosing Party an opportunity, at Disclosing Party's discretion and sole cost, to seek a protective order or similar relief, and the Receiving Party shall not oppose such request or relief. If such protective order or other appropriate remedy is not sought and obtained within at least thirty (30) days of Receiving Party's notice, Receiving Party shall disclose only that portion of the Protected Information that is required or necessary in the opinion of Receiving Party's legal counsel; provided, however, Receiving Party shall use reasonable efforts to obtain assurances that confidential treatment will be accorded to any Protected Information so disclosed.

16.5. Regulatory Disclosures by Buyer. This Section 16.5 will apply notwithstanding anything to the contrary in this Agreement. Seller understands and acknowledges that Buyer is regulated by various regulatory and market monitoring entities. Buyer is permitted, in its sole discretion, to disclose or to retain and not destroy (in case of a future disclosure need as determined by Buyer in its sole discretion) any information (including Protected Information) to any regulatory commission (inclusive of the NCUC, SCPSC, FERC), NERC, market monitor, office of regulatory staff, and/or public staff, or any other regulator or legislative body without providing prior notice to the Seller or having obtained the consent from the Seller, using Buyer's business judgment and the appropriate level of confidentiality Buyer seeks for any such disclosures or retentions in its sole discretion. In the event of the establishment of any docket or proceeding before any regulatory commission, public service commission, public utility commission, or other agency, tribunal, or court having jurisdiction over Buyer, the Protected Information shall automatically be governed solely by the rules and procedures governing such docket or proceeding to the extent such rules or procedures are additional to, different from, or inconsistent with this Agreement. In regulatory proceedings in all state and federal jurisdictions in which Buyer does business, Buyer will from time-to-time be required to produce Protected Information, and Buyer may do so without prior notice to Seller or consent from Seller, using Buyer's business judgment, and the appropriate level of confidentiality Buyer seeks for such disclosures in its sole discretion. When a request for disclosure of information, including Protected Information, is made to Buyer, Buyer may disclose the information, including Protected Information, without prior notice to the Seller or consent from the Seller, using Buyer's business judgment and the appropriate level of confidentiality Buyer seeks for such disclosures in its sole discretion. Seller further acknowledges that Buyer is required by law or regulation to report certain information that could embody Protected Information from time-to-time, and Buyer may from time-to-time make such reports, without providing prior notice to Seller or consent from Seller, using Buyer's business judgment and the appropriate level of confidentiality Buyer seeks for such disclosures in its sole discretion.

17. **Mutual Representations and Warranties**

17.1. As of the Effective Date and throughout the Term, each Party represents and warrants to the other Party that:

17.1.1. It is duly organized, validly existing and in good standing under the Requirements of Law of the jurisdiction of its organization or formation and has all requisite power and authority to execute and enter into this Agreement;

17.1.2. It has all authorizations under the Requirements of Law (including but not limited to the Required Approvals), necessary for it to legally perform its obligations and consummate the transactions contemplated hereunder or will obtain such authorizations in a timely manner prior to the time that performance by such Party becomes due;

17.1.3. The execution, delivery, and performance of this Agreement will not conflict with or violate any Requirements of Law or any contract, agreement or arrangement to which it is a party or by which it is otherwise bound;

17.1.4. This Agreement constitutes a legal, valid, and binding obligation of such Party enforceable against it in accordance with its terms, and such Party has all rights necessary to perform its obligations to the other Party in accordance with the terms and conditions of this Agreement;

17.1.5. It is acting for its own account, has made its own independent decision to enter into this Agreement and as to whether or not this Agreement is appropriate or proper for it based upon its own judgment, is not relying upon the representations, advice or recommendations of the other Party in so doing, is capable of assessing the merits of this Agreement, and understands and accepts the terms, conditions, and risks of this Agreement for fair consideration on an arm's length basis;

17.1.6. No Event of Default or event which with notice or lapse of time, or both, would become an Event of Default, has occurred with respect to such Party, and that such Party is not Bankrupt and there are no proceedings pending or being contemplated by it, or to its knowledge, threatened against it which would result in it being or becoming Bankrupt;

17.1.7. There is no pending, or to its knowledge, threatened legal proceeding at law or equity against it or any Affiliate, that materially adversely affects its ability to perform its obligations under this Agreement;

17.1.8. It is a "forward contract merchant" and this Agreement constitutes a "forward contract" as such terms are defined in the United States Bankruptcy Code;

17.1.9. It is an "eligible commercial entity" within the Commodity Exchange Act;

17.1.10. It is an "eligible contract participant" within the Commodity Exchange Act; and;

17.1.11. Each person who executes this Agreement on behalf of such Party has full and complete authority to do so, and that such Party will be bound by such execution.

18. **Seller Representations and Warranties to Buyer**

18.1. For all Product and every aspect thereof, Seller represents, warrants, and reaffirms to Buyer as a continuing warranty and representation that:

18.1.1. All Product will meet the specifications and requirements in this Agreement, including without limitation, compliance with PURPA;

18.1.2. Seller has provided and conveyed and will provide and convey to Buyer all Capacity rights associated with the Facility and Energy Produced by the Facility;

18.1.3. Seller holds all the rights to all the Product from the Facility, Seller has the right to sell the Product to Buyer, and Seller agrees to convey and does convey to Buyer all rights and good title to the Product free and clear of any Liens, encumbrances, or title defects;

18.1.4. Seller has not and will not double claim or double count the Product (including, without limitation, any Capacity of the Facility) in any manner (including, for example, by issuing a press release or otherwise claiming that Seller is creating any Capacity benefit, or selling the Product to any person other than exclusively to and for Buyer); and

18.1.5. Seller has not and will not in any manner interfere with, encumber or otherwise impede Buyer's use, transfer, and sale of the Product.

19. **<u>Events of Default</u>**

19.1. An "Event of Default" means with respect to the non-performing Party (such Party, the "Defaulting Party"), the occurrence of any one or more of the following events set forth below in this Section 19, each of which, individually, shall constitute a separate Event of Default:

19.2. The failure to make, when due, any payment required pursuant to this Agreement if such failure is not remedied within ten (10) Business Days after the Defaulting Party's receipt of written notice; *provided, however*, a Party will have two (2) Business Days to remedy any failure to make payment required under Section 21;

19.3. Any covenant or warranty made by Seller under Section 6.2 (Seller Covenant) is false or misleading in any respect when made or when deemed made or repeated.

19.4. Any representation or warranty made by a Party under Section 17 and elsewhere in this Agreement (except Section 18 which is a separate Event of Default) is false or misleading in any material respect when made or when deemed made or repeated;

19.5. Any representation or warranty made by Seller under Section 18 (Seller Representations and Warranties to Buyer) is false or misleading in any respect when made or when deemed made or repeated;

19.6. The actual Nameplate Capacity Rating of the Facility is higher than the Nameplate Capacity Rating set forth in Exhibit 4, or is lower than the Nameplate Capacity Rating by more than five (5) percent of the Nameplate Capacity Rating set forth in Exhibit 4.

19.7. Seller Abandons the Facility for more than sixty (60) consecutive days;

19.8. Seller fails to provide, replenish, renew, or replace the Performance Assurance and/or otherwise fails to fully comply with the credit related requirements of this Agreement, including without limitation, Section 5, and any such failure is not cured within five (5) Business Days.

19.9. Seller adds an energy storage device to the Facility without obtaining Buyer's prior written consent.

19.10. Seller fails to fully meet all the insurance requirements set forth in Section 7.5, and such failure is not cured within five (5) Business Days.

19.11. Seller fails to obtain or maintain the Facility's registration or certification as a Qualifying Facility under PURPA.

19.12. Seller fails to fully comply with the PURPA Fuel Requirements.

19.13. Seller delivers or attempts to deliver to Buyer any Product (or any component thereof) that was not generated by the Facility.

19.14. Seller fails to promptly and fully comply with a System Operator Instruction.

19.15. Seller consolidates or amalgamates with, or merges with or into, or transfers all or substantially all of its assets to, another entity and: (i) at the time of such consolidation, amalgamation, merger or transfer, the resulting, surviving or transferee entity fails to assume all the obligations of Seller under this Agreement to which it or its predecessor was a party by operation of law or pursuant to an agreement reasonably satisfactory to the other Party; or (ii) the resulting, surviving, transferee or successor entity fails to meet the Creditworthiness standards or post Performance Assurance as required under this Agreement.

19.16. An assignment by or Change of Control with respect to Seller, other than in compliance with Section 24;

19.17. A Party becomes Bankrupt;

19.18. Seller transfers or assigns or otherwise conveys any of its rights or obligations under this Agreement to another Person in violation of the terms and conditions of this Agreement; and

19.19. Except to the extent constituting a separate Event of Default (in which case the provisions applicable to that separate Event of Default shall apply) the failure to perform any material covenant or obligation set forth in this Agreement, if such failure is not remedied within thirty (30) days after the Defaulting Party's receipt of written notice.

20. **Early Termination.**

20.1. Early Termination Date. If an Event of Default with respect to a Defaulting Party has occurred and is continuing, then the other Party (such Party, the "Non-Defaulting Party") shall have the right, in its sole discretion and upon written notice to the Defaulting Party, to pursue any or all of the following remedies: (a) withhold payments due to the Defaulting Party under this Agreement; (b) suspend performance under this Agreement; and/or (c) designate a day (which day shall be no earlier than the day such notice is effective and shall be no later than twenty (20) days after the delivery of such notice is effective) as an early termination date to accelerate all amounts owing between the Parties, liquidate, net, recoup, set-off, and early terminate this Agreement and any other agreement between the Parties (such day, the "Early Termination Date").

20.2. Effectiveness of Default and Remedies. Where an Event of Default is specified herein and is governed by a system of law which does not permit termination to take place upon or after the occurrence of the relevant Event of Default in accordance with the terms of this Agreement an Event of Default and Early Termination Date shall be deemed to have occurred immediately upon any such event and no prior written notice shall be required. All of the remedies and provisions set forth in this section shall be without prejudice to any other right of the Non-Defaulting Party to accelerate amounts owed, net, recoup, setoff, liquidate, and early terminate this Agreement.

20.3. Net Settlement Amount. If the Non-Defaulting Party establishes an Early Termination Date, then the Non-Defaulting Party shall calculate its Gains or Losses and Costs resulting from the termination as of the Early Termination Date, in a Commercially Reasonable Manner. The Non-Defaulting Party shall aggregate such Gains or Losses and Costs with respect to the liquidation of the termination and any other amounts due under this Agreement and any other agreement between the Parties into a single net amount expressed in U.S. dollars (the "Net Settlement Amount"). The Non-Defaulting Party shall then notify the Defaulting Party of the Net Settlement Amount. The Defaulting Party shall pay the Non-Defaulting Party the full amount of the Net Settlement Amount within five (5) Business Days of delivery to the Defaulting Party of the notice of the Net Settlement Amount that the Defaulting Party is liable for.

20.4. Payment. Any Net Settlement Amount will only be due and payable only to the Non-Defaulting Party from and by the Defaulting Party. If the Non-Defaulting Party's aggregate Gains exceed its aggregate Losses and Costs, if any, resulting from the termination of this Agreement, the Net Settlement Amount will be deemed to be zero and no payment will be due or payable. The Non-Defaulting Party shall under no circumstances be required to account for or otherwise credit or pay the Defaulting Party for economic benefits accruing to the Non-Defaulting Party as a result of the Defaulting Party's default. The Non-Defaulting Party shall be entitled to recover any Net Settlement Amount by netting or set-off or to otherwise pursue recovery of damages. Additionally, Buyer will be entitled to recover any Net Settlement Amount by drawing upon any Performance Assurance or by netting or set-off, or to otherwise pursue recovery of damages. Any calculation and payment of the Net Settlement Amount will be independent of and in addition to Seller's obligation to reimburse Buyer for overpayments pursuant to Section 20.5.

20.5. <u>Overpayment Reimbursement.</u> Notwithstanding anything else in this Agreement to the contrary, including without limitation the Net Settlement Amount calculation and payment provisions set forth in Sections 20.1 through 20.4, and without limiting any of Buyer's other rights or remedies hereunder, Seller agrees and acknowledges that in the event this Agreement is terminated prior to the expiration of the Term for any reason other than an Event of Default by Buyer, that Seller will reimburse Buyer for all amounts paid by Buyer to Seller under this Agreement in excess of Buyer's avoided cost for energy and capacity over the period starting from the commencement of the Delivery Period through the date of termination of this Agreement plus interest on such amount calculated at the rate of 3.62% to be adjusted annually until repaid (the "Overpayment Amount"). Seller agrees to reimburse Buyer for the Overpayment Amount notwithstanding anything to the contrary in this Agreement and without regard to whether Seller is or may be liable to Buyer for any additional amounts under this Agreement, including, without limitation, any Net Settlement Amount, Gains, and/or Losses determined or to be determined pursuant to this Agreement. The Seller will pay Buyer the Overpayment Amount no later than three (3) Business Days after the Early Termination Date

20.6. <u>Survival.</u> This Section 20 will survive any expiration or termination of this Agreement.

21. **<u>Cover Costs</u>**.

21.1. <u>Exclusive Remedies</u>. Except where a specific and exclusive remedy is otherwise set forth in this Agreement, the remedies set forth in this Section shall be a Party's exclusive remedies prior to termination for the other Party's failure to deliver the Product or to receive the Product pursuant to and in accordance with this Agreement.

21.2. <u>Seller's Failure to Deliver</u>. If Seller fails to deliver Product that complies with the requirements set forth in this Agreement or fails to deliver all or part of the Contract Quantity (each will be deemed as a failure to deliver for purposes of calculating damages), and such failure is not excused by a Permitted Excuse to Perform or Buyer's failure to perform, then Buyer shall elect in its sole discretion: (i) to terminate and liquidate this Agreement if such failure is an Event of Default as set forth herein, and in which case Buyer shall calculate its termination payment in accordance with this Agreement as though it were the Non-Defaulting Party; or, (ii) to require Seller to pay Buyer within three (3) Business Days of invoice receipt, liquidated damages in the amount obtained by multiplying the number of units of Product (or component thereof) that Seller failed to deliver to Buyer multiplied by two (2) times the per unit Contract Price (or component thereof).

21.3. <u>Buyer's Failure to Accept Delivery</u>. If Buyer fails to receive all or part of the Contract Quantity that Seller attempted to deliver to Buyer in accordance with this Agreement, and such failure by Buyer is not excused by a Permitted Excuse to Perform or Seller's failure to perform, then Seller shall elect in its sole discretion either to: (i) terminate and liquidate this Agreement if such failure is an Event of Default as set forth herein, and in which case Seller shall calculate its termination payment in accordance with this Agreement as though it were the Non-Defaulting Party; or, (ii) require Buyer to pay Seller within three (3) Business Days of invoice receipt, liquidated damages in the amount obtained by multiplying the number of units of Product (or component thereof) that Buyer failed to receive multiplied by two (2) times the per unit Contract Price (or component thereof).

21.4. Event of Default. Any failure by Seller to pay amounts due under this Section 21 will be an Event of Default under Section 19.2.

21.5. Survival. This Section 21 will survive any expiration or termination of this Agreement.

22. **Limitation of Liabilities & Liquidated Damages.**

22.1. Reasonableness. THE EXPRESS REMEDIES AND MEASURES OF DAMAGES, INCLUDING WITHOUT LIMITATION DETERMINATION OF LIQUIDATED DAMAGES, COVER COSTS, AND NET SETTLEMENT AMOUNT DAMAGES PROVIDED FOR IN THIS AGREEMENT (i) ARE REASONABLE AND SATISFY THE ESSENTIAL PURPOSES HEREOF FOR BREACH OF ANY PROVISION FOR WHICH THE EXPRESS REMEDY OR MEASURE OF DAMAGES IS PROVIDED, AND (ii) UNLESS OTHERWISE STATED IN SUCH PROVISIONS, SUCH EXPRESS REMEDY OR MEASURE OF DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY, THE OBLIGOR'S LIABILITY SHALL BE LIMITED AS SET FORTH IN SUCH PROVISIONS, AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED. TO THE EXTENT ANY PROVISION OF THIS AGREEMENT PROVIDES FOR, OR IS DEEMED TO CONSTITUTE OR INCLUDE, LIQUIDATED DAMAGES, THE PARTIES STIPULATE AND AGREE THAT THE ACTUAL DAMAGES ARE DIFFICULT OR IMPOSSIBLE TO ESTIMATE OR DETERMINE, THE LIQUIDATED AMOUNTS ARE A REASONABLE APPROXIMATION OF AND METHODOLOGY TO DETERMINE THE ANTICIPATED HARM OR LOSS TO THE PARTY, AND OTHERWISE OBTAINING AN ADEQUATE REMEDY IS INCONVENIENT. THE PARTIES FURTHER STIPULATE AND AGREE THAT ANY PROVISIONS FOR LIQUIDATED DAMAGES ARE NOT INTENDED AS, AND SHALL NOT BE DEEMED TO CONSTITUTE, A PENALTY, AND EACH PARTY HEREBY WAIVES THE RIGHT TO CONTEST SUCH PROVISIONS AS AN UNREASONABLE PENALTY OR AS UNENFORCEABLE FOR ANY REASON.

22.2. Limitation. IF NO REMEDY OR MEASURE OF DAMAGES IS EXPRESSLY HEREIN PROVIDED, (i) THE OBLIGOR'S LIABILITY SHALL BE LIMITED TO DIRECT ACTUAL DAMAGES ONLY, SUCH DIRECT ACTUAL DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED; AND (ii) NEITHER PARTY SHALL BE LIABLE FOR CONSEQUENTIAL, INCIDENTAL, PUNITIVE, EXEMPLARY OR INDIRECT DAMAGES, LOST PROFITS OR OTHER BUSINESS INTERRUPTION DAMAGES, EVEN IF SUCH DAMAGES ARE ALLOWED OR PROVIDED BY STATUTE, STRICT LIABILITY, ANY TORT, CONTRACT, OR OTHERWISE.

22.3. Damages Stipulation. Each Party expressly agrees and stipulates that the terms, conditions, and payment obligations set forth in Sections 20 and 21 are a reasonable methodology to approximate or determine harm or loss, each Party acknowledges the difficulty of determining actual damages or loss, and each Party hereby waives the right to contest such damages and payments as unenforceable, as an unreasonable penalty, or otherwise for any reason. The Parties further acknowledge and agree that damages and payments determined under Sections 20 and 21 are direct damages, will be deemed to be a direct loss, and will not be excluded from liability or recovery under the Limitations of Liabilities provisions of this Section 22.

22.4. Survival. This Section 22 will survive any expiration or termination of this Agreement.

23. **Disputes and Arbitration**

23.1. Resolution by the Parties. The Parties shall attempt to resolve any claims, disputes and other controversies arising out of or relating to this Agreement (collectively, "Dispute(s)") promptly by negotiation between executives who have authority to settle the Dispute and who are at a higher level of management than the persons with direct responsibility for administration of this Agreement. A Party may give the other Party written notice of a Dispute that has not been resolved in the normal course of business. Such notice shall include: (a) a statement of that Party's position and a summary of arguments supporting such position, and (b) the name and title of the executive who will be representing that

Party and of any other person who will accompany the executive. Within ten (10) Business Days after delivery of the notice, the receiving Party shall respond with (a) a statement of that Party's position and a summary of arguments supporting such position, and (b) the name and title of the executive who will represent that Party and of any other person who will accompany the executive. Within twenty (20) Business Days after delivery of the initial notice, the executives of both Parties shall meet at Buyer's offices, and thereafter as often as they reasonably deem necessary, to attempt to resolve the Dispute. At the request of either Party, the Parties shall enter into a confidentiality agreement to cover any Dispute and discussions related thereto.

23.2. Demand for Arbitration.

23.2.1. If a Dispute has not been resolved by negotiation within thirty (30) Business Days of the disputing Party's initial notice, the Parties shall fully and finally settle the Dispute by binding arbitration administered by the American Arbitration Association ("AAA"), or such other nationally recognized arbitration association or organization as the Parties may mutually agree. The Arbitration shall be conducted in accordance with the AAA Commercial Arbitration Rules then in effect, and shall be governed by the Federal Arbitration Act, 9 U.S.C. §§ 1-16. To the extent the AAA Rules conflict with any provision of this Section 23 of this Agreement, the terms of this Agreement shall govern and control.

23.2.2. Either Party may serve the demand for arbitration on the other Party; provided, however, no demand for arbitration shall be made or permitted after the date when the institution of a civil action based on the Dispute would be barred by the applicable statute of limitations or repose.

23.2.3. All arbitration proceedings shall take place in Greenville, South Carolina.

23.2.4. A single arbitrator will arbitrate all Disputes where the amount in controversy is less than five-hundred thousand U.S. dollars ($500,000), and will be selected by the Parties or by the AAA if the Parties cannot agree to the arbitrator. Such arbitrator shall be a licensed attorney with at least ten (10) years of experience in the electric utility industry. The cost of the arbitrator(s) shall be borne equally by the Parties.

23.2.5. A panel of three (3) arbitrators will conduct the proceeding when the amount in controversy is equal to or more than five hundred thousand U.S. dollars ($500,000). If the Parties have not so agreed on such three (3) arbitrator(s) on or before thirty (30) days following the delivery of a demand for Arbitration to the other Party, then each Party, by notice to the other Party, may designate one arbitrator (who shall not be a current or former officer, director, employee or agent of such Party or any of its Affiliates). The two (2) arbitrators designated as provided in the immediately preceding sentence shall endeavor to designate promptly a third (3^{rd}) arbitrator.

23.2.6. If either Party fails to designate an initial arbitrator on or before forty five (45) days following the delivery of an arbitration notice to the other Party, or if the two (2) initially designated arbitrators have not designated a third (3^{rd}) arbitrator within thirty (30) days of the date for designation of the two (2) arbitrators initially designated, any Party may request the AAA to designate the remaining arbitrator(s) pursuant to its Commercial Arbitration Rules. Such third (3rd) arbitrator shall be a licensed attorney with at least ten (10) years of experience in the electric utility industry.

23.2.7. If any arbitrator resigns, becomes incapacitated, or otherwise refuses or fails to serve or to continue to serve as an arbitrator, the Party entitled to designate that arbitrator shall designate a successor.

23.3. Discovery. Either Party may apply to the arbitrators for the privilege of conducting discovery. The right to conduct discovery shall be granted by the arbitrators in their sole discretion with a view to avoiding surprise and providing reasonable access to necessary information or to information likely to be presented during the course of the arbitration, provided that such discovery period shall not exceed sixty (60) Business Days.

23.4. Binding Nature. The arbitrator(s)' decision shall be by majority vote (or by the single arbitrator if a single arbitrator is used) and shall be issued in a writing that sets forth in separately numbered paragraphs all of the findings of fact and conclusions of law necessary for the decision. Findings of fact and conclusions of law shall be separately designated as such. The arbitrator(s) shall not be entitled to deviate from the construct, procedures or requirements of this Agreement. The award rendered by the arbitrator(s) in any arbitration shall be final and binding upon the Parties, and judgment may be entered on the award in accordance with applicable law in any court of competent jurisdiction.

23.5. Consolidation. No arbitration arising under the Agreement shall include, by consolidation, joinder, or any other manner, any person not a party to the Agreement unless (a) such person is substantially involved in a common question of fact directly relating to the Dispute; provided however, such person will not include any Governmental Authority, (b) the presence of the person is required if complete relief is to be accorded in the arbitration, and (c) the person has consented to be included.

23.6. Mediation. At any time prior or subsequent to a Party initiating arbitration, the Parties may mutually agree to (but are not obligated to) attempt to resolve their Dispute by non-binding mediation, using a mediator selected by mutual agreement. The mediation shall be completed within thirty (30) Business Days from the date on which the Parties agree to mediate. Unless mutually agreed by the parties, any mediation agreed to by the Parties shall not delay arbitration. The Parties shall pay their own costs associated with mediation and shall share any mediator's fee equally. The mediation shall be held in Greenville, South Carolina, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court of competent jurisdiction.

23.7. Remedies. Except for Disputes regarding confidentiality arising under Section 16 of this Agreement, the procedures specified in this Section 23 shall be the sole and exclusive procedures for the resolution of Disputes between the Parties arising out of or relating to this Agreement; provided, however, that a Party may file a judicial claim or action on issues of statute of limitations or repose or to seek injunctive relief, sequestration, garnishment, attachment, or an appointment of a receiver, subject to and in accordance with the provisions of Section 26.5 (Venue/Consent to Jurisdiction). Preservation of these remedies does not limit the power of the arbitrator(s) to grant similar remedies, and despite such actions, the Parties shall continue to participate in and be bound by the dispute resolution procedures specified in this Section 23.

23.8. Settlement Discussions. All negotiations and discussion concerning Disputes between the Parties pursuant to Section 23 of this Agreement are to be deemed confidential and shall be treated as compromise and settlement negotiations for purposes of applicable rules of evidence and settlement privilege. No statement of position or offers of settlement made in the course of the dispute resolution process can be or will be offered into evidence for any purpose, nor will any such statements or offers of settlement be used in any manner against any Party. Further, no statement of position or offers of settlement will constitute an admission or waiver of rights by either Party. At the request of either Party, any such statements or offers, and all copies thereof, shall be promptly returned to the Party providing the same.

23.9. Survival. This Section 23 will survive any expiration or termination of this Agreement.

24. **Assignment**

24.1. Limitation. Except as set forth below in Section 24.2 with respect to pledging as collateral security, Seller shall not assign or encumber (collectively, the "Assignment") this Agreement, any rights or obligations under the Agreement, or any portion hereunder, without Buyer's prior written consent. Seller shall give Buyer at least thirty (30) days prior written notice of any requested Assignment. Subject to Seller providing Buyer with information demonstrating to Buyer, in Buyer's Commercially Reasonable Discretion, that Seller's proposed assignee has the technical, engineering, financial, and operational capabilities to perform under this Agreement, Buyer may not unreasonably withhold its consent; *provided, however*, that any such assignee shall agree in writing to be bound by the terms and conditions hereof and shall deliver to Buyer Performance Assurance in the amount required under this Agreement, and such enforceability assurance as the Buyer may request in its sole Commercially Reasonable discretion. Notwithstanding anything to the contrary herein, Buyer may pledge, encumber, or assign this Agreement without the consent of Seller to any Person that is Creditworthy, or that has provided Seller with a guaranty substantially in the form of Exhibit 6 from a Creditworthy credit support provider guaranteeing the assignee's obligations hereunder, and that has agreed in writing to assume the obligations of Buyer hereunder.

24.2. Pledge. Seller may, without prior consent of Buyer but with no less than ten (10) Business Days prior written notice to Buyer, pledge as collateral security this Agreement to a financing party in connection with any loan, lease, or other debt or equity financing arrangement for the Facility. Any pledge of this Agreement as collateral security will not relieve Seller of any obligation or liability under this Agreement or compromise, modify or affect any rights, benefits or risks of Buyer under this Agreement.

24.3. Acknowledgement of Non-Default. Provided that Seller is not in default of its obligations under this Agreement, upon reasonable request by Seller, Buyer will execute a written acknowledgement of non-default in the form of Exhibit 8 attached hereto (the "Acknowledgement") which shall be based on the actual knowledge of Buyer's personnel responsible for administering the Agreement at the time of the execution of the Acknowledgement and after due inquiry of Buyer's internal records only. Notwithstanding any provision to the contrary set forth in the Acknowledgment, Buyer reserves all rights and defenses available to it under the Agreement, and nothing stated therein shall be deemed to have waived, amended or modified any such rights or defenses. In no event shall the issuance of any Acknowledgement introduce any third party to this Agreement or create any rights, including third party beneficiary rights for any Person under this Agreement.

24.4. Change of Control. Any Change of Control of Seller (however this Change of Control occurs) shall require the prior written consent of Buyer, which shall not be unreasonably withheld or delayed. Seller shall give Buyer at least thirty (30) days prior written notice of any such requested consent to a Change of Control.

24.5. Delivery of Assurances & Voidable. Any Assignment or Change of Control will not relieve Seller of its obligations hereunder, unless Buyer agrees in writing in advance to waive the Seller's continuing obligations under this Agreement. In case of a permitted Assignment, such requesting party or parties shall agree in writing to assume all obligations of Seller and to be bound by the terms and conditions of this Agreement and shall deliver to Buyer such tax, credit, performance, and enforceability assurances as Buyer may request, in its Commercially Reasonable discretion. Further, Buyer's consent to any Assignment may be conditioned on and subject to Seller's proposed assignee having first obtained all approvals that may be required by any Requirements of Law and from all applicable Governmental Authorities. Any sale, transfer, Change of Control, and/or Assignment of any interest in the Facility or in the Agreement made without fully satisfying the requirements of this Agreement shall be null and void and will be an Event of Default hereunder with Seller as the Defaulting Party.

24.6. Cost Recovery. Without limiting Buyer's rights under this Section 24, to the extent Buyer agrees to a request from Seller for one or more consent(s) to an Assignment or Change of Control under this Agreement, Seller shall pay Buyer ten thousand dollars ($10,000) prior to Buyer processing Seller's request.

25. **Notices**.

25.1. Process. All notices, requests, or invoices shall be in writing and shall be sent to the address of the applicable Party as specified on the first page of this Agreement. A Party may change its information for receiving notices by sending written notice to the other Party. Notices shall be delivered by hand, certified mail (postage prepaid and return receipt requested), or sent by overnight mail or courier. This section shall be applicable whenever words such as "notify," "submit," "give," or similar language are used in the context of giving notice to a Party.

25.2. Receipt of Notices. Hand delivered notices shall be deemed delivered by the close of the Business Day on which it was hand delivered. Notices provided by certified mail (postage prepaid and return receipt requested), mail delivery or courier service, or by overnight mail or courier service will be deemed received on the date of delivery recorded by the delivery service or on the tracking receipt, as applicable. Notwithstanding anything to the contrary, if the day on which any notice is delivered or received is not a Business Day or is after 5:00 p.m. EPT on a Business Day, then it shall be deemed to have been received on the next following Business Day.

26. **Miscellaneous.**

26.1. Costs. Each Party shall be responsible for its own costs and fees associated with negotiating or disputing or taking any other action with respect to this Agreement, including, without limitation, attorney costs, except that the cost of the arbitrator(s) will be allocated equally between the Parties as provided in Section 23.

26.2. Access. Upon reasonable prior notice, Seller shall provide to Buyer and its authorized agents (including contractors and sub-contractors), employees, auditors, and inspectors reasonable access to the Facility to: (i) tour or otherwise view the Facility; (ii) ascertain the status of the Facility with respect to construction, start-up and testing, or any other obligation of Seller under this Agreement; and, (iii) read meters and perform all inspections, maintenance, service, and operational reviews as may be appropriate to facilitate the performance of this Agreement or to otherwise audit and/or verify Seller's performance under this Agreement. Upon reasonable prior notice, Seller shall provide to Buyer and its guests or customers reasonable access to the Facility to only tour or otherwise view the Facility. While at the Facility, the foregoing agents, employees, auditors, inspectors, guests, and customer shall observe such reasonable safety precautions as may be required by Seller, conduct themselves in a manner that will not interfere with the operation of the Facility, and adhere to Seller's reasonable rules and procedures applicable to Facility visitors. Seller shall have the right to have a representative of Seller present during such access.

26.3. Safe Harbor and Waiver of Section 366. Each Party agrees that it will not assert, and waives any right to assert, that the other Party is performing hereunder as a "utility," as such term is used in 11 U.S.C. Section 366. Further, each Party hereby waives any right to assert and agrees that it will not assert that 11 U.S.C. Section 366 applies to this Agreement or any transaction hereunder in any bankruptcy proceeding. In any such proceeding each Party further waives the right to assert and agrees that it will not assert that the other Party is a provider of last resort with respect to this Agreement or any transaction hereunder or to otherwise limit contractual rights to accelerate amounts owed, net, recoup, set-off, liquidate, and/or early terminate. Without limiting the generality of the foregoing or the binding nature of any other provision of this Agreement on permitted successors and assigns, this provision is intended to be binding upon all successors and assigns of the Parties, including, without limitation, judgment lien creditors, receivers, estates in possession, and trustees thereof.

26.4. Governing Law. THIS AGREEMENT AND THE RIGHTS AND DUTIES OF THE PARTIES HEREUNDER SHALL BE GOVERNED BY AND CONSTRUED, ENFORCED, AND PERFORMED IN ACCORDANCE WITH THE LAWS OF THE STATE OF SOUTH CAROLINA, WITHOUT REGARD TO PRINCIPLES OF CONFLICTS OF LAW, AND, IF APPLICABLE, BY THE FEDERAL LAW OF THE UNITED STATES OF AMERICA.

26.5. Venue/Consent to Jurisdiction. Except for Disputes that are subject to Arbitration as provided herein, any judicial action, suit, or proceedings arising out of, resulting from, or in any way relating to, this Agreement, or any alleged breach or default under the same or the warranties and representations contained in the same, shall be brought only in a state or federal court of competent jurisdiction located in Greenville County, South Carolina. The Parties hereto irrevocably consent to the jurisdiction of any federal or state court within Greenville County, South Carolina and hereby submit to venue in such courts. Without limiting the generality of the foregoing, the Parties waive and agree not to assert by way of motion, defense, or otherwise in such suit, action, or proceeding, any claim that (i) such Party is not subject to the jurisdiction of the state or federal Courts within South Carolina; or (ii) such suit, action, or proceeding is brought in an inconvenient forum; or (iii) the venue of such suit, action, or proceeding is improper. The exclusive forum for any litigation between them under this Agreement that is not subject to Arbitration shall occur in federal or state court within Greenville County, South Carolina.

26.6. Limitation of Duty to Buy. If this Agreement is terminated due to a default by Seller, neither Seller, nor any affiliate and/or successor of Seller, nor any affiliate and/or successor to the Facility, including without limitation owner and/or operator of the Facility will require or seek to require Buyer to purchase any output (Energy or otherwise) from the Facility under any Requirements of Law (including without limitation PURPA) or otherwise for any period that would have been covered by the Term of this Agreement had this Agreement remained in effect at a price that exceeds the Contract Price. Seller, on behalf of itself and on behalf of any other entity on whose behalf it may act, and on behalf of any successor to the Seller or successor to the Facility, hereby agrees to the terms and conditions in the above sentence, and hereby waives its right to dispute the above sentence. Seller authorizes the Buyer to record notice of the foregoing in the real estate records.

26.7. Entire Agreement and Amendments. This Agreement represents the entire agreement between the Parties with respect to the subject matter of this Agreement, and supersedes all prior negotiations, binding documents, representations and agreements, whether written or oral. No amendment, modification, or change to this Agreement shall be enforceable unless agreed upon in a writing that is executed by the Parties.

26.8. Drafting. Each Party agrees that it (and/or its counsel) has completely read, fully understands, and voluntarily accepts every provision, term, and condition of this Agreement. Each Party agrees that this Agreement shall be considered for all purposes as prepared through the joint efforts of the Parties, and no Party shall have any provision hereof construed against such Party by reason of such Party drafting, negotiating, or proposing any provision hereof, or execution of this Agreement. Each Party irrevocably waives the benefit of any rule of contract construction that disfavors the drafter of a contract or the drafter of specific language in a contract.

26.9. Headings. All section headings in this Agreement are included herein for convenience of reference only and shall not constitute a part of this Agreement for any other purpose.

26.10. Publicity.

26.10.1. Limitation on Seller. Seller shall not make any announcement or release any information concerning or otherwise relating to this Agreement to any member of the public, press, Person, official body, or otherwise without Buyer's prior written consent, which shall not be unreasonably withheld; provided, however, any content approved by Buyer shall be limited to the non-confidential facts of the Agreement and will not imply, directly or indirectly, any endorsement, partnership, support, or testimonial of Seller by Buyer.

26.10.2. Limitation on the Parties. Neither Party shall make any use of the other Party's name, logo, likeness in any publication, promotional material, news release, or similar issuance or material without the other Party's prior review, approval, and written consent. Seller agrees and acknowledges that any reference or likeness to "Duke" shall be a prohibited use of Buyer's name, logo, likeness. Seller agrees and acknowledges that any direct or indirect implication of any endorsement, partnership, support, or testimonial of Seller by Buyer is prohibited, and any such use, endorsement, partnership, support, and/or testimonial will be an Event of Default under this Agreement. Subject to the foregoing, either Party may disclose to the public general information in connection with the Party's respective business activities; *provided, however,* no such disclosure or publicity by Seller will directly or indirectly imply any endorsement, partnership, support, or testimonial of Seller by Buyer.

26.11. Waiver. No waiver by any Party of any of its rights with respect to the other Party or with respect to any matter or default arising in connection with this Agreement shall be construed as a waiver of any subsequent right, matter or default whether of a like kind or different nature. Any waiver under this Agreement will be effective only if it is in writing that has been duly executed by an authorized representative of the waiving Party.

26.12. Partnership and Beneficiaries. Nothing contained in this Agreement shall be construed or constitute any Party as the employee, agent, partner, joint venture, or contractor of any other Party. This Agreement is made and entered into for the sole protection and legal benefit of the Parties, and their permitted successors and assigns. No other person or entity, including, without limitation, a financing or collateral support provider, will be a direct or indirect beneficiary of or under this Agreement, and will not have any direct or indirect cause of action or claim under or in connection with this Agreement.

26.13. Severability. Any provision or section hereof that is declared or rendered unlawful by any applicable court of law, or deemed unlawful because of a statutory change, shall not, to the extent practicable, affect other lawful obligations under this Agreement.

26.14. Counterparts. This Agreement may be executed in counterparts, including facsimiles hereof, and each such executed document will be deemed to be an original document and together will complete execution and effectiveness of this Agreement.

[Remainder of page intentionally left blank. Signature page follows.]

IN WITNESS WHEREOF, Seller and Buyer have caused this Agreement to be executed by their respective duly authorized officers as of the Effective Date.

DUKE ENERGY CAROLINAS, LLC

BY: ____
NAME: _____________________________________
TITLE: _____________________________________
DATE:

CHEROKEE COUNTY COGENERATION PARTNERS, LLC

BY: ________________________________
NAME: _____________________________
TITLE: _____________________________
DATE:

Exhibit 1

Estimated Monthly Energy Production of the Facility

Month	Estimated Facility Energy Production (MWh)
January	[redacted]
February	[redacted]
March	[redacted]
April	[redacted]
May	[redacted]
June	[redacted]
July	[redacted]
August	[redacted]
September	[redacted]
October	[redacted]
November	[redacted]
December	[redacted]
Total	[redacted]

Exhibit 2

Contract Price ($/MWh)

CAPACITY PRICING	
Summer Months PM	[redacted]
Winter Months AM	[redacted]
Winter Months PM	[redacted]
ENERGY PRICING	
Summer Premium Peak	[redacted]
Summer On-Peak	[redacted]
Summer Off-Peak	[redacted]
Winter Premium Peak	[redacted]
Winter On-Peak AM	[redacted]
Winter On-Peak PM	[redacted]
Winter Off-Peak	[redacted]
Shoulder On-Peak (AM & PM)	[redacted]
Shoulder Off-Peak	[redacted]

ENERGY CREDIT

Summer months	June through September
Winter months	December through February
Shoulder months	March through May and October and November

Summer on-peak hours shall be Monday through Friday from 1:00 PM to 4:00 PM and 8:00 PM to 9:00 PM.

Winter on-peak hours shall be Monday through Friday with morning hours from 4:00 AM to 6:00 AM and 9:00 AM to 11:00 AM plus evening hours from 6:00 PM to 10:00 PM.

Shoulder on-peak hours shall be Monday through Friday with morning hours from 5:00 AM to 10:00 AM plus evening hours from 5:00 PM to 11:00 PM.

Summer premium peak hours shall be Monday through Friday from 4:00 PM to 8:00 PM.

Winter premium peak hours shall be Monday through Friday from 6:00 AM to 9:00 AM.

There are no premium peak hours for Shoulder months.

All other hours, plus the following holidays, shall be off-peak: New Year's Day, Good Friday, Memorial Day, Independence Day, Labor Day, Thanksgiving Day and the day after, and Christmas Day. When a holiday falls on a Saturday, the Friday before the holiday shall be considered off-peak. When a holiday falls on a Sunday, the following Monday shall be considered off-peak.

CAPACITY CREDIT

Applicable Summer months are defined as July and August. Applicable Winter months are defined as December through March. Capacity credits are not applicable in all other months.

Summer evening on-peak hours shall be 4:00 PM to 8:00 PM during all Summer days.

Winter morning on-peak hours shall be all Winter days from 6:00 AM to 9:00 AM. Winter evening on-peak hours shall be all Winter days from 6:00 PM to 9:00 PM.

Exhibit 3

NOT USED

Exhibit 4 (to be provided by Seller)

Facility Information

1. Facility Name:
2. Facility Address:
3. Description of Facility (include number, manufacturer and model of Facility generating units, and layout):
4. Nameplate Capacity Rating:
5. [DC/AC Ratio:]
6. Fuel Type/Generation Type:
7. System Operator Instruction Dispatch Control Equipment: Full automatic generation control, as applicable to the Facility.
8. Site Map (include location and layout of the Facility, equipment, and other site details):
9. Delivery Point Diagram (include Delivery Point, metering, Facility substation):
10. [Storage Resources. Subject to final approval by Buyer as of the date of final execution of the Interconnection Agreement, the following Storage resources shall be connected to or incorporated into the Facility [identify the design and all material components of any battery storage or other energy storage device connected to or incorporated into the Facility]

    UPON EXECUTION OF THE AGREEMENT TO WHICH THIS EXHIBIT IS ATTACHED, ANY MATERIAL MODIFICATION TO THE FACILITY SHALL REQUIRE BUYER'S PRIOR APPROVAL, WHICH SHALL NOT BE UNREASONABLY WITHHELD, CONDITIONED OR DELAYED, AND SHALL BE MEMORIALIZED IN WRITING IN AN AMENDMENT TO THE AGREEMENT.

Exhibit 5

Expected Annual Output

[redacted]

Exhibit 6
Form of Guaranty

THIS GUARANTY AGREEMENT (this "Guaranty"), dated as of [date], is issued and delivered by [**enter corporate legal name**], a [state] [form of entity] (the "Guarantor"), for the account of [**enter corporate name**], a [state] [form of entity] (the "Obligor"), and for the benefit of **[enter corporate name]**, a **[state] [form of entity]** (the "Beneficiary").

Background Statement

WHEREAS, the Beneficiary and Obligor entered into that certain _____________ dated (the "Agreement"); and

WHEREAS, Beneficiary has required that the Guarantor deliver to the Beneficiary this Guaranty as an inducement to enter into the Agreement.

Agreement

NOW, THEREFORE, in consideration of the foregoing and for good and valuable consideration, the Guarantor hereby agrees as follows:

1. Guaranty; Limitation of Liability. Subject to any rights, setoffs, counterclaims and any other defenses that the Guarantor expressly reserves to itself under this Guaranty, the Guarantor absolutely and unconditionally guarantees the timely payment of the Obligor's payment obligations under the Agreement (the "Guaranteed Obligations"); provided, however, that the Guarantor's aggregate liability hereunder shall not exceed **[amount] U. S. Dollars (U.S. [$xx,xxx,xxx])**.

Subject to the other terms of this Guaranty, the liability of the Guarantor under this Guaranty is limited to payments expressly required to be made under the Agreement, and except as specifically provided therein, the Guarantor shall not be liable for or required to pay any consequential or indirect loss (including but not limited to loss of profits), exemplary damages, punitive damages, special damages, or any other damages or costs.

2. Effect of Amendments. The Guarantor agrees that the Beneficiary and the Obligor may modify, amend and supplement the Agreement and that the Beneficiary may delay or extend the date on which any payment must be made pursuant to the Agreement or delay or extend the date on which any act must be performed by the Obligor thereunder, all without notice to or further assent by the Guarantor, who shall remain bound by this Guaranty, notwithstanding any such act by the Beneficiary.

3. Waiver of Rights. The Guarantor expressly waives (i) protest, (ii) notice of acceptance of this Guaranty by the Beneficiary, and (iii) demand for payment of any of the Guaranteed Obligations.

4. Reservation of Defenses. Without limiting the Guarantor's own defenses and rights hereunder, the Guarantor reserves to itself all rights, setoffs, counterclaims and other defenses that the Obligor may have to payment of all or any portion of the Guaranteed Obligations except defenses arising from the bankruptcy, insolvency, dissolution or liquidation of the Obligor and other defenses expressly waived in this Guaranty.

5. Settlements Conditional. This guaranty shall remain in full force and effect or shall be reinstated (as the case may be) if at any time any monies paid to the Beneficiary in reduction of the indebtedness of the Obligor under the Agreement have to be repaid by the Beneficiary by virtue of any provision or enactment relating to bankruptcy, insolvency or liquidation for the time being in force, and the liability of the Guarantor under this Guaranty shall be computed as if such monies had never been paid to the Beneficiary

6. Notice. The Beneficiary will provide written notice to the Guarantor if the Obligor defaults under the Agreement.

7. Primary Liability of the Guarantor. The Guarantor agrees that the Beneficiary may enforce this Guaranty without the necessity at any time of resorting to or exhausting any other security or collateral. This is a continuing Guaranty of payment and not merely of collection.

8. Representations and Warranties. The Guarantor represents and warrants to the Beneficiary as of the date hereof that:

a. The Guarantor is duly organized, validly existing and in good standing under the laws of the jurisdiction of its incorporation and has full power and legal right to execute and deliver this Guaranty and to perform the provisions of this Guaranty on its part to be performed;

b. The execution, delivery and performance of this Guaranty by the Guarantor have been and remain duly authorized by all necessary corporate action and do not contravene any provision of its certificate of incorporation or by-laws or any law, regulation or contractual restriction binding on it or its assets;

c. All consents, authorizations, approvals, registrations and declarations required for the due execution, delivery and performance of this Guaranty have been obtained from or, as the case may be, filed with the relevant governmental authorities having jurisdiction and remain in full force and effect, and all conditions thereof have been duly complied with and no other action by, and no notice to or filing with, any governmental authority having jurisdiction is required for such execution, delivery or performance; and

d. This Guaranty constitutes the legal, valid and binding obligation of the Guarantor enforceable against it in accordance with its terms, except as enforcement hereof may be limited by applicable bankruptcy, insolvency, reorganization or other similar laws affecting the enforcement of creditors' rights or by general equity principles.

9. Nature of Guaranty. The Guarantor hereby agrees that its obligations hereunder shall be unconditional irrespective of the impossibility or illegality of performance by the Obligor under the Agreement; the absence of any action to enforce the Agreement; any waiver or consent by Beneficiary concerning any provisions of the Agreement; the rendering of any judgment against the Obligor or any action to enforce the same; any failure by Beneficiary to take any steps necessary to preserve its rights to any security or collateral for the Guaranteed Obligations; the release of all or any portion of any collateral by Beneficiary; or any failure by Beneficiary to perfect or to keep perfected its security interest or lien in any portion of any collateral.

10. Subrogation. The Guarantor will not exercise any rights that it may acquire by way of subrogation until all Guaranteed Obligations shall have been paid in full. Subject to the foregoing, upon payment of all such Guaranteed Obligations, the Guarantor shall be subrogated to the rights of Beneficiary against the Obligor, and Beneficiary agrees to take at the Guarantor's expense such steps as the Guarantor may reasonably request to implement such subrogation.

11. Term of Guaranty. This Guaranty shall remain in full force and effect until the earlier of (i) such time as all the Guaranteed Obligations have been discharged, and (ii) [date] (the "Expiration Date"); provided however, the Guarantor will remain liable hereunder for Guaranteed Obligations that were outstanding prior to the Expiration Date.

12. Governing Law. This Guaranty shall be governed by and construed in accordance with the internal laws of the State of New York without giving effect to principles of conflicts of law.

13. Expenses. The Guarantor agrees to pay all reasonable out-of-pocket expenses (including the reasonable fees and expenses of the Beneficiary's counsel) relating to the enforcement of the Beneficiary's rights hereunder in the event the Guarantor disputes its obligations under this Guaranty and it is finally determined (whether through settlement, arbitration or adjudication, including the exhaustion of all permitted appeals), that the Beneficiary is entitled to receive payment of a portion of or all of such disputed amounts.

14. Waiver of Jury Trial. The Guarantor and the Beneficiary, through acceptance of this Guaranty, waive all rights to trial by jury in any action, proceeding or counterclaim arising or relating to this Guaranty.

15. Entire Agreement; Amendments. This Guaranty integrates all of the terms and conditions mentioned herein or incidental hereto and supersedes all oral negotiations and prior writings in respect to the subject matter hereof. This Guaranty may only be amended or modified by an instrument in writing signed by each of the Guarantor and the Beneficiary.

16. Headings. The headings of the various Sections of this Guaranty are for convenience of reference only and shall not modify, define or limit any of the terms or provisions hereof.

17. No Third-Party Beneficiary. This Guaranty is given by the Guarantor solely for the benefit of the Beneficiary, and is not to be relied upon by any other person or entity.

18. Assignment. Neither the Guarantor nor the Beneficiary may assign its rights or obligations under this Guaranty without the prior written consent of the other, which consent may not be unreasonably withheld or delayed. Notwithstanding the foregoing, the Beneficiary may assign this Guaranty, without the Guarantor's consent, provided such assignment is made to an affiliate or subsidiary of the Beneficiary

Any purported assignment in violation of this Section 18 shall be void and without effect.

19. Notices. Any communication, demand or notice to be given hereunder will be duly given when delivered in writing or sent by electronic mail to the Guarantor or to the Beneficiary, as applicable, at its address as indicated below:

If to the Guarantor, at:

[Guarantor name]
[Address]
Attention: [contact]
Email: [email address]

With a copy to:

[Seller name]
[Address]
Attention: [contact]
Email: [email address]

If to the Beneficiary, at:

[Beneficiary name]
[Address]
Attention: [contact]
Email: [email address]

or such other address as the Guarantor or the Beneficiary shall from time to time specify. Notice shall be deemed given (a) when received, as evidenced by signed receipt, if sent by hand delivery, overnight courier or registered mail or (b) when received, as evidenced by email confirmation, if sent by email and received on or before 4 pm local time of recipient, or (c) the next business day, as evidenced by email confirmation, if sent by email and received after 4 pm local time of recipient.

IN WITNESS WHEREOF, the Guarantor has executed this Guaranty as of the day and year first above written

[Guarantor name]

By: ________________________________
Name: ________________________________
Title: ________________________________

Exhibit 7
Form of Letter of Credit

[LETTERHEAD OF ISSUING BANK]

Irrevocable Standby Letter of Credit No.: ____________

Date: ______________

Beneficiary:
Duke Energy Carolinas, LLC
550 S. Tryon Street, DEC 40C
Charlotte, North Carolina 28202
Attn: Chief Risk Officer

Ladies and Gentlemen:

By the order of:

Applicant:
____
____
____

We hereby issue in your favor our irrevocable standby letter of credit No.: _________ for the account of____ for an amount or amounts not to exceed ___________ US Dollars in the aggregate (US$_______________) available by your drafts at sight drawn on [Issuing Bank] effective _________________ and expiring at our office on ________________ (the "Expiration Date").

The Expiration Date shall be deemed automatically extended without amendments for one year from the then current Expiration Date unless at least ninety (90) days prior to the then applicable Expiration Date, we notify you in writing by certified mail return receipt requested or overnight courier that we are not going to extend the Expiration Date. During said ninety (90) day period, this letter of credit shall remain in full force and effect

Funds under this letter of credit are available against your draft(s), in the form of attached Annex 1, mentioning our letter of credit number and presented at our office located at [Issuing Bank's address must be in US] and accompanied by a certificate in the form of attached Annex 2 with appropriate blanks completed, purportedly signed by an authorized representative of the Beneficiary, on or before the Expiration Date in accordance with the terms and conditions of this letter of credit. Partial drawings under this letter of credit are permitted.

Certificates showing amounts in excess of amounts available under this letter of credit are acceptable, however, in no event will payment exceed the amount available to be drawn under this letter of credit.

We engage with you that drafts drawn under and in conformity with the terms of this letter of credit will be duly honored on presentation if presented on or before the Expiration Date. Presentation at our office includes presentation in person, by certified, registered, or overnight mail.

Except as stated herein, this undertaking is not subject to any agreement, condition or qualification. The obligation of [Issuing Bank] under this letter of credit is the individual obligation of [Issuing Bank] and is in no way contingent upon reimbursement with respect hereto.

This letter of credit is subject to the International Standby Practices 1998, International Chamber of Commerce Publication No. 590 (“ISP98”). Matters not addressed by ISP98 shall be governed by the laws of the state of New York.

We shall have a reasonable amount of time, not to exceed three (3) business days following the date of our receipt of drawing documents, to examine the documents and determine whether to take up or refuse the documents and to inform you accordingly.

Kindly address all communications with respect to this letter of credit to [Issuing Bank’s contact information], specifically referring to the number of this standby letter of credit.

All banking charges are for the account of the Applicant.

This letter of credit may not be amended, changed or modified without our express written consent and the consent of the Beneficiary.

This letter of credit is transferable, and we agree to consent to its transfer, subject to our standard terms of transfer and your payment to us of our standard transfer fee.

Very truly yours
[Issuing Bank]

____________________________ ____________________________

Authorized Signer Authorized Signer

This is an integral part of letter of credit number: *[irrevocable standby letter of credit number]*

ANNEX 1

FORM OF SIGHT DRAFT

[Insert date of sight draft]

To: *[Issuing Bank's name and address]*

For the value received, pay to the order of ________________________ by wire transfer of immediately available funds to the following account:

> *[name of account]*
> *[account number]*
> *[name and address of bank at which account is maintained]*
> *[aba number]*
> *[reference]*

The following amount:

> *[insert number of dollars in writing]* United States Dollars
> (US$ *[insert number of dollars in figures]*)

Drawn upon your irrevocable letter of credit No. *[irrevocable standby letter of credit number]* dated *[effective date]*

[Beneficiary]

By: ____________________________
Title: __________________________

This is an integral part of letter of credit number: *[irrevocable standby letter of credit number]*

ANNEX 2

FORM OF CERTIFICATE

[Insert date of certificate]

To: *[issuing bank's name and address]*

[check appropriate draw condition]

[_____] An Event of Default (as defined in the [Name of Agreement between [Beneficiary's Name] and [Insert Counterparty's Name] dated as of _________ (the "Agreement")) has occurred with respect to [Counterparty's Name] and such Event of Default has not been cured within the applicable cure period, if any provided for in the Agreement.

Or

[_____] [Counterparty's Name] is required, pursuant to the terms of the Agreement, to maintain a letter of credit in favor of [Beneficiary's Name], has failed to renew or replace the Letter of Credit and the Letter of Credit has less than thirty (30) days until the expiration thereof.

[Beneficiary]

By: ___________________________
Title:__________________________

Exhibit 8
Acknowledgement of Non-Default

[Print Duke Energy letterhead]

Date:

Address of Seller

Re: Acknowledgement of Non-Default (the "Acknowledgement") of the Power Purchase Agreement, between [Duke Energy Carolinas, LLC][Duke Energy Progress, LLC] ("Buyer") and [insert Seller name] dated as of _______________ (the "Agreement").

Dear Sir or Madam:

The undersigned, a duly authorized representative of Buyer hereby acknowledges to Seller as follows:

1. The copy of the Agreement attached hereto as Exhibit A (including any amendments thereto) constitutes a true and complete copy of the Agreement;

2. Buyer has not transferred or assigned its interest in the Agreement; and

3. as of the date of this Acknowledgement based on the actual knowledge of Buyer's personnel responsible for administering the Agreement after due inquiry of Buyer's internal records only, there is no current Event of Default by Seller or Buyer under the Agreement, nor to Buyer's knowledge, has any event or omission occurred which, with the giving of notice or the lapse of time or both, would constitute an Event of Default under the Agreement and the Agreement is in full force and effect.

Notwithstanding any provision to the contrary set forth herein, Buyer reserves all rights and defenses available to it under the Agreement and nothing stated herein shall be deemed to have waived, amended or modified any such rights or defenses.

Except as specified herein to the contrary, capitalized terms used in this Acknowledgement shall have the meaning ascribed to such terms in the Agreement.

Sincerely,

[Duke Energy Carolinas, LLC][Duke Energy Progress, LLC]

By:___________________________
Name: ________________________
Title: _________________________

Exhibit 9
Energy Storage Protocol

1. The Storage Resource must be on the DC side of the inverter and charged exclusively by the Facility.

2. The Storage Resource will be controlled by the Seller, within operational limitations described below.

3. The maximum output of the Facility, including any storage capability, at any given time shall be limited to the Facility's Nameplate Capacity as specified in the Agreement.

4. The discharge of stored energy is not permitted while the Facility has received or is subject to a curtailment instruction (i.e., System Operator Instruction) from the system operator if such discharge would cause the total output of the Facility to exceed the level permitted by the System Operator Instruction.

5. Ramp rates for Storage Resource shall not exceed 10 percent of the Storage Resource's capacity (MW) on a per minute basis, up or down, unless the Storage Resource is ramping to mitigate solar volatility, in which case the ramp rate limitation does not apply.

6. Scheduling for capturing peak pricing periods and other storage limitations:
   a. Note: Scheduling criteria below are not intended to preclude the ability of the Seller to use the storage device primarily to smooth facility output and thereby qualify for the SISC Credit in lieu of maximizing discharge during Capacity Hour or peak pricing windows.
   b. For all (winter and summer) months/days with discrete capacity rate hour window periods ("Capacity Hour Window"), the Seller shall distribute any intended energy storage discharge of the storage device in a manner that levelizes (holds constant), on an expected basis, the total output of the Facility at the highest practical level over the duration of each specific Capacity Hour Window selected by the Seller for energy storage discharge of such calendar day, except as limited by ramp rate criteria, inverter capability, availability, state of charge and the Facility's Nameplate Capacity as specified in the Agreement. For clarity, total output of the Facility is not required to be held at the same level across both morning and evening Capacity Hour Windows during winter months. The Seller may, at its discretion, elect to discharge storage across either or both winter morning and evening Capacity Hour Windows, provided that the intended energy storage discharge for each Capacity Hour Window is distributed in a way that holds total Facility output constant across the respective Capacity Hour Window.
      i. For any storage discharge occurring on weekends and holidays where only Off-Peak energy rates apply, the Seller shall be permitted to distribute discharge (if any) of the storage device across hours selected by Seller, except as limited by ramp rate criteria, inverter capability, availability, state of charge and the Facility's Nameplate Capacity as specified in the Agreement.

c. For the remaining (shoulder) months without Capacity Hour windows, the Seller shall be permitted to distribute discharge (if any) of the storage device across hours selected by Seller, except as limited by ramp rate criteria, inverter capability, availability, state of charge and the Facility's Nameplate Capacity as specified in the Agreement.

7. Company reserves the right to add or modify operating restrictions specified in these Energy Storage Protocols to the extent necessary to comply with NERC Standards as such standards may be modified from time to time during the Term. Any such modification shall be implemented by Company in a Commercially Reasonable Manner and shall be applied to the Facility and Company's own generating assets on a non-discriminatory basis. If Seller can make a commercially reasonable demonstration to Company, which is approved by Company in its reasonable discretion, that the Facility does not contribute to potential NERC compliance violations for which the modifications have been implemented, then such modifications shall not apply to the Facility.

8. If identification of Capacity Hours changes over the course of the term of the Agreement, Seller will make Commercially Reasonable Efforts to work with Company to adjust the hours of charging/discharging to coincide with these updated hours. However, Seller shall not be obligated to do so in a way that compromises their original economic value contemplated for storage resource.

9. Seller will only be compensated for Energy and Capacity actually provided to Buyer in accordance with the terms of the Agreement.

Notes:

Other capitalized terms used in this Exhibit which have not been defined herein shall have the meaning ascribed to such terms in the Agreement to which this exhibit is attached.

Exhibit 10
Form of Surety Bond

SURETY BOND OF PAYMENT AND PERFORMANCE (the "Bond")

* * * * *

PRINCIPAL *(Legal Name and Business Address)*

SURETY *(Legal Name and Business Address)*	***SURETY BOND EFFECTIVE DATE***
OBLIGEE Duke Energy Carolinas, LLC Attn: Credit Risk Manager 550 South Tryon Street (DEC41Q) Charlotte, NC 28202	***SURETY BOND INITIAL EXPIRATION DATE***
SECURITY AMOUNT	***PENAL SUM OF BOND***

KNOW ALL PERSONS BY THESE PRESENTS THAT: Principal and Surety are jointly and severally held and firmly bound to Duke Energy Carolinas, LLC ("Duke Energy" or "Obligee"), a limited liability company organized and existing under the laws of the state of North Carolina, its successors and assigns in the amount of $[*insert Bond Amount*] ("Bond Amount" or "Penal Sum of Bond"), for the payment of which the Principal and Surety, their heirs, executors, administrators, successors and assigns are hereby jointly and severally bound. Hereinafter Surety, Principal and Duke Energy may be individually referred to as a "Party" and collectively as the "Parties."

RECITALS

WHEREAS, Principal and Duke Energy have entered into that certain [Power Purchase Agreement], dated as of _________ ____, 20__ _________ ____, (hereinafter, the "Agreement");

WHEREAS, Principal is proposing to develop a [describe generating facility] (the "Facility") located in ___________ County, [insert state], at [*insert address]*, as further identified in the Agreement; and

WHEREAS, Duke Energy has required that Principal deliver this Bond to Duke Energy as a material inducement to enter into the Agreement.

NOW THEREFORE, for good and valuable consideration, the receipt, adequacy and sufficiency of which are hereby acknowledged, the terms and conditions of this obligation are as follows, that if Principal, shall fully and faithfully pay and perform its obligations under the Agreement according to the terms, stipulations or conditions thereof, then this Bond shall become null and void, otherwise to remain in full force and effect and be performed and enforceable in accordance with its terms. This Bond is executed by the Principal and Surety and accepted by Duke Energy on and subject to the following express terms and conditions:

1. Capitalized terms undefined herein will take the meaning or definition provided in the Agreement. In the event of any conflict between this Bond and the Agreement, the terms of this Bond will control.

2. Surety absolutely and unconditionally guarantees the timely payment of Principal's payment obligations under the Agreement when due (the "Obligations") in accordance with the terms of the Agreement and this Bond.

3. Surety shall honor Duke Energy's request for payment under this Bond upon presentation by Duke Energy of a demand for payment in accordance with the terms of this Bond ("Demand for Payment") which includes one or more of the following certifications by Duke Energy with appropriate blanks completed:

   a. Duke Energy Carolinas, LLC ("Duke Energy") hereby certifies that the amount of US$ __________ is due and owing and remains unpaid (beyond the time allowed for such payment, including following any related notice or grace period or both) to Duke Energy by [Principal's name] in accordance with the terms and provisions of [insert name of power purchase agreement] dated as of [insert date], by and between Duke Energy and [insert Principal's name] (the "Agreement") and Duke Energy hereby demands payment in the amount of [*insert amount up to the full Bond Amount*];

   or

b. Duke Energy Carolinas, LLC ("Duke Energy") hereby certifies that an event of Default, as defined in the [insert name of power purchase agreement] dated as of [insert date], by and between Duke Energy and [insert Principal's name] (the "Agreement") has occurred with respect to [insert Principal's name] and such event of Default has not been cured within the applicable cure period, if any provided for in the Agreement and pursuant to the terms of the Agreement, Duke Energy is entitled to the funds requested herein. Based on the foregoing, Duke Energy hereby demands payment in the amount of [*insert amount up to the full Bond Amount*];

Or

c. [insert Principal's name] is required, pursuant to the terms of the [Insert name of Agreement] dated as of [insert date], by and between Duke Energy Carolinas, LLC ("Duke Energy") and [insert Principal's name] (the "Agreement"), to maintain a financial security in favor of Duke Energy, has failed to renew or replace this Bond and the Bond has less than sixty (60) days until the expiration thereof and based on the foregoing, Duke Energy hereby demands payment in the amount of [*insert amount up to the full Bond Amount*] which shall be held by Duke Energy as financial security in accordance with the terms of the Agreement.

4. Surety will, not later than five (5) days after delivery of a Demand for Payment to the Surety at the address provided below, pay the Bond Amount to Duke Energy.

5. Duke Energy's right to recover the Bond Amount will in no way limit its entitlement to other remedies to which Duke Energy may be entitled pursuant to the terms of the Agreement or applicable law.

6. It is hereby agreed that this Bond is effective beginning on the Surety Bond Effective Date, above and shall remain in effect for an initial term of [insert initial term] (the "Expiration Date") The Expiration Date shall be deemed automatically extended without amendments for successive one year periods commencing on the then current Expiration Date unless at least ninety (90) days prior to the then applicable Expiration Date, Surety notifies Duke Energy in writing by certified mail return receipt requested or overnight courier that Surety has elected to not extend the Expiration Date of the Bond. During said ninety (90) day period, this Bond shall remain in full force and effect.

7. Notices. Any communication, demand or notice to be given hereunder will be duly given when delivered in writing to a Party at its address as indicated below:

.

If to Surety:
{Add notice info}

If to Duke Energy:
Duke Energy Carolinas, LLC
Attn: Credit Risk Manager
550 South Tryon Street (DEC41Q)
Charlotte, NC 28202

If to Principal:
{Add notice info}

8. The Surety's liability under this Bond is limited to the Bond Amount plus enforcement costs (if any) required under Section 11 below.

9. The Surety hereby waives notice of any and all modifications, omissions, additions, changes, alterations, extensions of time, changes in payment terms, and any other amendments in or about the Agreement agreed to between Principal and Duke Energy, and agrees that the obligations undertaken by this Bond shall not be impaired in any manner by reason of any such modifications, omissions, additions, changes, alterations, extensions of time, change in payment terms, or amendments. Any bankruptcy or insolvency of Principal or any related discharge, release or cessation of any liability of Principal shall not affect Surety's obligations hereunder. Except for any notice expressly required under the terms hereof, Surety waives all presentments, demands for performance, notices of non-performance, notices of breach or waiver, rights of subrogation (until such time as the Agreement and/or this Bond shall have been indefeasibly paid and performed in full), protests, notices of protest, notices of default or dishonor, notices of acceptance of this Bond and any requirement that Duke Energy bring or pursue any action against Principal and any right to demand collateral or security.

10. If any part or provision of this Bond will be declared unenforceable or invalid by a court of competent jurisdiction, such determination in no way will affect the validity or enforceability of the other parts or provisions of this Bond.

11. The Surety agrees to pay all reasonable out-of-pocket expenses (including the reasonable fees and expenses of Duke Energy's counsel) relating to the enforcement of Duke Energy's rights hereunder in the event the Surety disputes its obligations under this Bond and it is finally determined (whether through settlement, arbitration or adjudication, including the exhaustion of all permitted appeals), that Duke Energy is entitled to receive payment of a portion of or all of such disputed amounts.

12. TO THE FULLEST EXTENT PERMITTED BY LAW, DUKE ENERGY, PRINCIPAL, AND SURETY WAIVE ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF LITIGATION DIRECTLY ARISING OUT OF THIS BOND.

13. DUKE ENERGY, PRINCIPAL, AND SURETY SUBMIT TO THE JURISDICTION OF THE STATE AND FEDERAL COURTS LOCATED IN MECKLENBURG COUNTY NORTH CAROLINA FOR PURPOSES OF ALL LITIGATION DIRECTLY ARISING OUT OF THIS BOND. EACH OF THE AFOREMENTIONED PARTIES HEREBY IRREVOCABLY: (i) WAIVES ANY OBJECTION IT MAY NOW OR HEREAFTER HAVE TO THE LAYING OF THE VENUE OF ANY SUCH LITIGATION IN SUCH A COURT; AND (ii) WAIVES ANY CLAIM THAT ANY LITIGATION BROUGHT IN SUCH A COURT HAS BEEN BROUGHT IN AN INCONVENIENT FORUM.

14. DUKE ENERGY, PRINCIPAL, AND SURETY AGREE THAT THE TERMS AND ENFORCEMENT OF THIS BOND SHALL BE GOVERNED, CONSTRUED AND INTERPRETED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK, WITHOUT GIVING EFFECT TO ANY CONFLICTS OF LAWS PRINCIPLES OF THAT STATE OR ANY OTHER STATE OR JURISDICTION.

15. The undersigned Surety agent(s) represent that he/she is a true and lawful attorney-in-fact for the Surety and authorized to bind the Surety hereto and to affix the Surety's corporate seal hereunder, as evidenced by the attached power of attorney.

IN WITNESS WHEREOF, this instrument is SIGNED AND SEALED this _____ day of_______________, 20__.

PRINCIPAL:

Signature: ______________________

(SEAL) Name and Title: ______________________

SURETY:

Attorney in Fact: ______________________

Signature: ______________________

(SEAL) Name and Title: ______________________

AFFIDAVIT AND ACKNOWLEDGEMENT OF ATTORNEY-IN-FACT

STATE OF _____________

COUNTY OF ___________

I hereby certify that I am the attorney-in-fact of _______________________, a [*insert entity type*], which is the surety in the foregoing bond, and that I am authorized to execute on the above Surety's behalf the foregoing bond pursuant to the Power of Attorney dated ____________ and attached hereto, and on behalf of the Surety, acknowledge the foregoing bond before me as the above Surety's act and deed.

Given under my hand this _____ day of ____________.

____
ATTORNEY-IN-FACT

____
PRINT NAME

(NOTARY SEAL)

Duke Energy Carolinas, LLC and Duke Energy Progress, LLC
Keen Direct Exhibit 2

Attachment 16

LS Power July 20, 2020 Letter
Requesting Avoided Cost Support

LS POWER
Innovation and Investment in Energy

1700 Broadway
35th Floor
New York, NY 10019
T: 212-615-3456

July 20, 2020

Duke Energy
Progress, LLC
Michael Keen
Business Development Manager
FL 155 299 First Avenue North
St Petersburg, FL 33701
Michael.keen@duke-energy.com

Dear Mr. Keen:

Cherokee County Cogeneration Partners, LLC ("Cherokee") project is in receipt of the proposed PPA you forwarded to us on June 24, 2020. Cherokee disagrees with Duke Energy Progress's ("DEP") denial that Cherokee established a legally enforceable obligation ("LEO") as of December 12, 2018. However, in an effort to negotiate in good faith and move the process forward, Cherokee would like to engage with DEP and work toward finalizing a PPA for Cherokee so it can continue to be part of Duke's supply portfolio, as it has for the last 22 years. To kick start the negotiation, we provide the questions and discussion items below. To facilitate the purported timing DEP indicates to complete the PPA, we request a response to these items and discussion on the phone by July 24, 2020 since our current COVID-19 protocols prevent in person meetings at this time. We are glad to accept a written response in advance of the discussion.

1. Please provide the methodology and any back-up information that DEP used to calculate the On-Peak and Off-Peak Energy Prices. How were the On-Peak and Off-Peak and summer and non-summer periods determined? Were the avoided cost rates and underlying methodology filed with the State Commission? If so, please provide any supporting calculations or other documentation filed with the Commission, as well as any orders issued by, or letters or other communications received from, the Commission noting approval or acceptance of the avoided cost rates and the underlying methodology.

2. Please provide the underlying monthly gas curve used by DEP to determine the On-Peak and Off-Peak Energy Prices and does this reflect recently announced cancellation of the Atlantic Coast Pipeline? If so, please explain how the impact of that cancellation was incorporated in the avoided cost rates.

3. Please provide the methodology and any back-up information that DEP used to calculate the Capacity prices. Why are the payments only applicable to the morning and evening periods for December – March?

4. Please explain why payment for the avoided cost of capacity on a $/MWh delivered basis is appropriate for a dispatchable gas-fired facility? Is this consistent with how DEP is reimbursed through rates for the fixed capital and operating costs of dispatchable capacity avoided by

contracting with Cherokee?

5. With regard to the proposed 5 year term, please provide any supporting data or documentation supporting the 5 year term. Similar to no. 1 above, please provide any orders issued by, or any letters or communications received from, the Commission noting approval or acceptance of the 5 year term as the appropriate term for a PURPA power purchase agreement and why the 10 year term offered by DEP to other Qualifying Facilities is not available to Cherokee. Also, how does DEP evaluate similar capacity resources built by DEP; is a 5 year assumed life used?

6. Describe the energy delivery requirements contemplated under DEP's proposed PPA? Is this PPA based on a firm 24x7 delivery except for under certain exemptions provided for in the PPA?

7. Describe the Delivery Point – in particular, confirm that a designated network resource in DEC is deemed deliverable to the Delivery Point.

8. Describe the performance standards Duke must undertake to achieve Commission Approval of the PPA, assume it's the same standard as a self-build facility

9. Discuss the relevance of the waiver of PURPA rights in Section 26.6 of the PPA

10. Please confirm that the obligations of Seller in Section 7 are treated in a similar manner to a Duke self-built asset and not passed through to ratepayers

We look forward to your responses and appreciate your attention to these items.

Very truly yours,

Carolyne
Murff Senior
Vice President
Cherokee County Cogeneration Partners, LLC

Cc: David Johnson
Nathan Hanson

Duke Energy Carolinas, LLC and Duke Energy Progress, LLC
Keen Direct Exhibit 2

Attachment 17

DEP August 20, 2020 Responsive Letter
To LS Power Providing Supplemental Avoided Cost Support

DUKE ENERGY.

PROPRIETARY AND CONFIDENTIAL

August 20, 2020

Via Email and Priority Mail

Ms. Carolyne Murff
Senior Vice President
Cherokee County Cogeneration Partners, LLC
1700 Broadway, 35th Floor
New York, NY 10019

Re: Cherokee County Cogeneration Partners, LLC ("Cherokee") letter dated July 20, 2020

Dear Ms. Murff:

Duke Energy Progress, LLC ("DEP" or the "Company") is in receipt of Cherokee County Cogeneration Partners, LLC's ("Cherokee") letter dated July 20, 2020. DEP has provided responses to the questions below:

1. Please provide the methodology and any back-up information that DEP used to calculate the On-Peak and Off-Peak Energy Prices. How were the On-Peak and Off-Peak and summer and non-summer periods determined? Were the avoided cost rates and underlying methodology filed with the State Commission? If so, please provide any supporting calculations or other documentation filed with the Commission, as well as any orders issued by, or letters or other communications received from, the Commission noting approval or acceptance of the avoided cost rates and the underlying methodology.

RESPONSE: The energy pricing by period is the result of using the methodology approved by the South Carolina Public Service Commission in Docket No. 2019-186-E. The approved methodology involves dispatch modeling the full generation fleet, including purchases, against total retail and wholesale load to establish a base-case cost of production (fuel and other variable production costs). A change-case is then created by inserting 100 MW of QF capacity running 7x24 into the base case. The addition of this QF capacity displaces other resource generation, thereby reducing their production costs. The reduction in system production cost represents "avoided" production cost, which is compiled on an energy pricing period basis. Additional adjustments account for working capital and avoided losses.

2. Please provide the underlying monthly gas curve used by DEP to determine the On-Peak and Off-Peak Energy Prices and does this reflect recently announced cancellation of the Atlantic Coast Pipeline? If so, please explain how the impact of that cancellation was incorporated in the avoided cost rates.

RESPONSE: The ACP cancellation was not factored into the pricing. The DEP avoided cost pricing was based on an April 2020 update of fuel costs. Gas prices were updated in April to reflect the forward market for natural gas at that time.

3. Please provide the methodology and any back-up information that DEP used to calculate the Capacity prices. Why are the payments only applicable to the morning and evening periods for December – March?

RESPONSE: Capacity pricing is calculated from the annualized cost of simple cycle combustion turbine capacity, based on the methodology approved by the PSC in Docket No. 2019-186-E. These costs are split between summer and winter capacity seasons on the basis of loss of load expectation (LOLE), which also provided the basis for the capacity season definitions.

4. Please explain why payment for the avoided cost of capacity on a $/MWh delivered basis is appropriate for a dispatchable gas-fired facility? Is this consistent with how DEP is reimbursed through rates for the fixed capital and operating costs of dispatchable capacity avoided by contracting with Cherokee?

RESPONSE: The avoided cost was provided on $/MWh consistent with typical time differentiated avoided cost rate formats and is not a reflection of a specific dispatchable gas fired facility or a specific rate reimbursement methodology.

5. With regard to the proposed 5-year term, please provide any supporting data or documentation supporting the 5-year term. Similar to no. 1 above, please provide any orders issued by, or any letters or communications received from, the Commission noting approval or acceptance of the 5-year term as the appropriate term for a PURPA power purchase agreement and why the 10-year term offered by DEP to other Qualifying Facilities is not available to Cherokee. Also, how does DEP evaluate similar capacity resources built by DEP; is a 5-year assumed life used?

RESPONSE: The 10-year term was not offered to Cherokee because SC law only requires PPAs of ten years in duration to be offered to small power producers, which Cherokee is not. (*See* S.C. Code Ann. § 58-41-20(F)(1))

6. Describe the energy delivery requirements contemplated under DEP's proposed PPA? Is this PPA based on a firm 24x7 delivery except for under certain exemptions provided for in the PPA?

RESPONSE: The Facility Performance Requirements, including the Output Requirements, are described in Section 8 of the PPA.

7. Describe the Delivery Point – in particular, confirm that a designated network resource in DEC is deemed deliverable to the Delivery Point.

RESPONSE: The Delivery Point is defined in Section 1.23 of the PPA. This Delivery Point contemplates the QF delivering the energy directly to DEP. Delivery to DEC does not constitute delivery to DEP. The QF shall be responsible for all transmission charges and line losses associated with delivering the power into the DEP system.

8. Describe the performance standards Duke must undertake to achieve Commission Approval of the PPA, assume it's the same standard as a self-build facility

RESPONSE: DEP will file the PPA for acceptance with the PSC. PSC approval of the PPA is not required.

9. Discuss the relevance of the waiver of PURPA rights in Section 26.6 of the PPA.

RESPONSE: The requirements in Section 26.6 are for the protection of DEP's customers and are consistent with the PPA as approved by the South Carolina Public Service Commission. This Section does not constitute a waiver of PURPA rights but instead is part of the remedy available to Duke Energy if the QF defaults under a PURPA contract and attempts to resell the energy at a higher price.

10. Please confirm that the obligations of Seller in Section 7 are treated in a similar manner to a Duke self-built asset and not passed through to ratepayers

RESPONSE: Cherokee, as a QF seeking to sell the output to DEP under PURPA is entitled to a contract rate equal to DEP's avoided cost. The rate specified in this PPA is equal to DEP's estimated avoided cost for the period covered under the PPA and was calculated in accordance with the methodology approved by the South Carolina Public Service Commission as further detailed in our response to Question 1 above. All costs associated with the operation and maintenance of the Facility, including the obligations specified in Section 7 of the PPA are the responsibility of the QF and are consistent with the PPA as approved by the South Carolina Public Service Commission.

Due to the delay in Duke Energy's response to your questions, Duke is offering to extend the deadline for your response to the DEP PPA from August 23 to September 4. Please feel free to contact me at (727) 820-4500 if you have any further questions.

Sincerely,

Michael T. Keen
Duke Energy
Business Development Manager

Duke Energy Carolinas, LLC and Duke Energy Progress, LLC
Keen Direct Exhibit 2

Attachment 18

LS Power's Unsolicited "Counter-Offer" to Sell Capacity to DEC, Received September 25, 2020

From: Nathan Hanson <NHanson@lspower.com>
Sent: Friday, September 25, 2020 9:48 AM
To: Keen, Michael T
Subject: [EXTERNAL] Cherokee

Mike, thanks for speaking with me earlier this week. As we discussed on the phone and not to go into it here, below are the terms we need in a contracting opportunity.

[redacted]

Month	Capacity (MW)	FOM and Cap
[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]

We think this arrangement provides Duke significant value along with meeting its purpa obligations and represents movement from what we have offered previously. I understand you are meeting with your team on Monday and look to hear back from you after that.

Thanks

Nathan Hanson
LS Power
212-547-2917 (o)
646-770-7244 (m)

Duke Energy Carolinas, LLC and Duke Energy Progress, LLC
Keen Direct Exhibit 2

Attachment 19

DEC's October 5, 2020 Response
To LS Power's September 25, 2020 Unsolicited Proposal

From: Keen, Michael T <Michael.Keen@duke-energy.com>
Sent: Monday, October 5, 2020 9:01 AM
To: Nathan Hanson
Subject: RE: [EXTERNAL] Cherokee

Nate,

I wanted to confirm that you received my vm on 9/29. Unfortunately, your counter offer below is well above DEC's avoided costs and is not an offer we can accept. Please give me a call if you have any questions.

Michael Keen
Business Development Manager
Duke Energy
Office 727.820.4500
Mobile 727.424.2665

Duke Energy Carolinas, LLC and Duke Energy Progress, LLC
Keen Direct Exhibit 2

Attachment 20

Duke Energy October 27, 2020 Email Providing Copies of SC Large QF Tariffs to N. Hanson of LS Power

From:	Keen, Michael T <Michael.Keen@duke-energy.com>
Sent:	Tuesday, October 27, 2020 9:18 AM
To:	'nhanson@lspower.com'
Subject:	SC Large QF Tariffs
Attachments:	C4 - SC Schedule PPL-2 (10-26-20) clean.pdf; SCSchedule PP-LQF (Eff. 10.26.2020 - Current) clean.pdf

Nate,

The SC Large QF Tariffs for DEP and DEC are attached. They are effective 10/26/20.

Michael Keen
Business Development Manager
Duke Energy
Office 727.820.4500
Mobile 727.424.2665

PURCHASED POWER SCHEDULE FOR LARGE QUALIFYING FACILITIES PPL-2

AVAILABILITY

This Schedule is made available pursuant to Order No. 2020-315(A) for purchase by Company of electrical energy and capacity supplied by Small Power Producer Qualifying Facilities (as defined by Chapter 41 of Title 58 of the S.C. Code of Laws) with a nameplate capacity rating greater than two (2) megawatts ("Eligible Sellers") and delivered to Company's system upon execution of the standard Power Purchase Agreement – Large QF PPA approved by the Commission ("LQF PPA") by Eligible Seller and Company. The sale, delivery, and use of electric power hereunder, and all services of whatever type to be rendered or performed in connection therewith, shall in all respects be subject to and in accordance with the Company's LQF PPA. Consistent with S.C. Code Ann § 58-41-20(A) and the Public Utility Regulatory Policies Act of 1978, nothing herein restricts an Eligible Seller from entering into a Power Purchase Agreement with the Company with rates, terms and conditions that differ from this Schedule or the LQF PPA.

The Fixed Long-Term Credits offered in this Schedule are available only to Eligible Sellers that establish a legally enforceable obligation to sell and deliver power to Company through (i) negotiation and execution of a mutually-binding LQF PPA (or alternative form of Power Purchase Agreement acceptable to Company, in its sole discretion); or (ii) through Eligible Seller's execution and delivery of a Notice of Commitment Form, as approved by the Commission, which is accepted by Company to be complete and to establish the Eligible Seller's legally enforceable obligation date pursuant to the terms of the Notice of Commitment Form. Prior to an Eligible Seller establishing a legally enforceable obligation, the Long-Term Credits under this Schedule shall be indicative of Company's current avoided cost of energy and capacity but shall not be binding on either Company or the Eligible Seller and shall be subject to adjustment through updates to this Schedule unless and until the Eligible Seller establishes a legally enforceable obligation as set forth herein.

To obtain an LQF PPA or Notice of Commitment Form, an Eligible Seller may contact the Company at:

Duke Energy - Distributed Energy Technologies
400 South Tryon Street
Mail Code: ST 26A
Charlotte, North Carolina 28202
Attn.: Wholesale Renewable Manager
DERContracts@duke-energy.com

Pursuant to Order No. 2020-315(A), the Company will continue to incorporate the most up-to-date inputs to avoided energy and avoided capacity costs for purposes of calculating avoided cost rates offered under this Schedule consistent with the methodology approved by the Commission and Company's most recent integrated resource plan. The Fixed Long-Term Credits identified in the Rate section of this Schedule shall only be available to Eligible Sellers that establish a legally enforceable obligation on or before the date that the Company submits updated Fixed Long-Term Credits under this Schedule to the Commission.

This Schedule is limited to power delivered to Company by Eligible Sellers under the LQF PPA. If Eligible Seller requires supplemental, back-up, or standby services, Eligible Seller shall enter into a separate service agreement with Company in accordance with Company's applicable electric rates, riders, and Service Regulations on file with and authorized by the state regulatory agency having jurisdiction. Nothing in this Schedule shall be interpreted as providing for interconnection to Company's system; such interconnection service must be contracted for separately pursuant to the South Carolina Generator Interconnection Procedures.

RATE

Company shall pay Eligible Sellers for energy and/or capacity furnished to Company at the Credits set forth below as applicable and such payments shall be reduced by the Integration Services Charge, pursuant to the terms of the LQF PPA

Integration Services Charge

The Integration Services Charge, and avoidance thereof, is addressed in the LQF PPA.

Integration Services Charge: $0.00239 per kWh

Energy and Capacity Credits

Eligible Sellers shall be paid based upon the Eligible Seller's interconnection with Company's distribution or transmission system for all energy delivered to Company's system as registered or computed from Company's metering facilities. The Energy and Capacity Credit provided herein is based on a contract term of ten (10) years.

	Fixed Long-Term Rate (10 years) Interconnected to Distribution	Fixed Long-Term Rate (10 years) Interconnected to Transmission
Energy Credits (¢/kWh)[1]:		
On-peak kWh:		
a. Summer		
1. Afternoon/Evening Hours	2.69	2.62
b. Winter		
1. Morning Hours	3.34	3.28
2. Evening Hours	3.88	3.81
c. Premium Peak		
1. Summer	3.56	3.48
2. Winter	4.21	4.11
d. Shoulder		
1. Morning/Evening Hours	2.88	2.85
Off-peak kWh:		
a. Summer	2.75	2.71
b. Winter	3.17	3.13
c. Shoulder	2.44	2.42
Capacity Credits (¢/kWh)[2]:		
On-peak kWh:		
a. Summer	0.20	0.20
b. Winter		
1. Morning Hours	9.45	9.28
2. Evening Hours	4.11	4.03

[1] For Energy Credit purposes, Summer months are defined as calendar months June through September, Winter months are defined as calendar months December through February, and Shoulder months are defined as March through May and October through November. Summer on-peak hours shall be Monday through Friday from 1:00 p.m. to 4:00 p.m. and 8:00 p.m. to 9:00 p.m. Winter on-peak hours shall be Monday through Friday with morning hours from 4:00 a.m. to 6:00 a.m. and 9:00 a.m. to 11:00 a.m., plus evening hours from 6:00

p.m. to 10:00 p.m. Shoulder on-peak hours shall be Monday through Friday with morning hours from 5:00 a.m. to 10:00 a.m. plus evening hours from 5:00 p.m. to 11:00 p.m. Summer premium peak hours shall be Monday through Friday from 4:00 p.m. to 8:00 p.m. Winter premium peak hours shall be Monday through Friday from 6:00 a.m. to 9:00 a.m. There are no premium peak hours for Shoulder months. All other hours, plus the following holidays, shall be off-peak: New Year's Day, Good Friday, Memorial Day, Independence Day, Labor Day, Thanksgiving Day and the day after, and Christmas Day. When a holiday falls on a Saturday, the Friday before the holiday will be considered off-peak; when the holiday falls on a Sunday, the following Monday will be considered off-peak.

[2] Capacity Credit shall only be applicable in Summer months defined as the calendar months of July and August and Winter months defined as calendar months of December through March. Summer on-peak hours shall be 4:00 p.m. to 8:00 p.m. during all Summer days. During Winter months, the morning on-peak hours shall be all Winter days from 6:00 a.m. to 9:00 a.m. and evening on-peak hours shall be all Winter days from 6:00 p.m. to 9:00 p.m. Capacity credits are not applicable in all other months.

RENEWABLE ENERGY CREDITS

The sale of power under this Schedule does not convey to Company the right to renewable energy credits (RECs) or green tags associated with the energy delivered.

POWER FACTOR CORRECTION

For distribution-connected Eligible Sellers, unless Eligible Seller is required by an Operating Agreement to adjust VAR production to support voltage control, when Eligible Seller consumes VARs supplied by Company or Eligible Seller delivers VARs to Company, the monthly bill will be increased by a sum equal to $0.30 multiplied by the maximum consumed or supplied reactive kilovolt-amperes (kVAR) registered by a demand meter suitable for measuring the demand used during a 15-minute interval.

AVAILABILITY (South Carolina only)

This Schedule is made available pursuant to Order No. 2020-315(A) for purchase by Company of electrical energy and capacity supplied by Small Power Producer Qualifying Facilities (as defined by Chapter 41 of Title 58 of the S.C. Code of Laws) with a nameplate capacity rating greater than two (2) megawatts ("Eligible Sellers") and delivered to Company's system upon execution of the standard Power Purchase Agreement – Large QF PPA approved by the Commission ("LQF PPA") by Eligible Seller and Company. The sale, delivery, and use of electric power hereunder, and all services of whatever type to be rendered or performed in connection therewith, shall in all respects be subject to and in accordance with the Company's LQF PPA. Consistent with S.C. Code Ann § 58-41-20(A) and the Public Utility Regulatory Policies Act of 1978, nothing herein restricts an Eligible Seller from entering into a Power Purchase Agreement with the Company with rates, terms and conditions that differ from this Schedule or the LQF PPA.

The Fixed Long-Term Credits offered in this Schedule are available only to Eligible Sellers that establish a legally enforceable obligation to sell and deliver power to Company through (i) negotiation and execution of a mutually-binding LQF PPA (or alternative form of Power Purchase Agreement acceptable to Company, in its sole discretion); or (ii) through Eligible Seller's execution and delivery of a Notice of Commitment Form, as approved by the Commission, which is accepted by Company to be complete and to establish the Eligible Seller's legally enforceable obligation date pursuant to the terms of the Notice of Commitment Form. Prior to an Eligible Seller establishing a legally enforceable obligation, the Long-Term Credits under this Schedule shall be indicative of Company's current avoided cost of energy and capacity but shall not be binding on either Company or the Eligible Seller and shall be subject to adjustment through updates to this Schedule unless and until the Eligible Seller establishes a legally enforceable obligation as set forth herein.

To obtain an LQF PPA or Notice of Commitment Form, an Eligible Seller may contact the Company at:

Duke Energy - Distributed Energy Technologies
400 South Tryon Street
Mail Code: ST 26A
Charlotte, North Carolina 28202
Attn.: Wholesale Renewable Manager
DERContracts@duke-energy.com

Pursuant to Order No. 2020-315(A), the Company will continue to incorporate the most up-to-date inputs to avoided energy and avoided capacity costs for purposes of calculating avoided cost rates offered under this Schedule consistent with the methodology approved by the Commission and Company's most recent integrated resource plan. The Fixed Long-Term Credits identified in the Rate section of this Schedule shall only be available to Eligible Sellers that establish a legally enforceable obligation on or before the date that the Company submits updated Fixed Long-Term Credits under this Schedule to the Commission,

This Schedule is limited to power delivered to Company by Eligible Sellers under the LQF PPA. If Eligible Seller requires supplemental, back-up, or standby services, Eligible Seller shall enter into a separate service agreement with Company in accordance with Company's applicable electric rates, riders, and Service Regulations on file with and authorized by the state regulatory agency having jurisdiction. Nothing in this Schedule shall be interpreted as providing for interconnection to Company's system; such interconnection service must be contracted for separately pursuant to the South Carolina Generator Interconnection Procedures.

RATE

Company shall pay Eligible Sellers for energy and/or capacity furnished to Company at the Credits set forth below as applicable. Such payments shall be reduced by the Integration Services Charge pursuant to the terms of the LQF PPA.

Integration Services Charge

The Integration Services Charge, and avoidance thereof, is addressed in the LQF PPA.

Integration Services Charge: $0.00110 per kWh

Energy and Capacity Credits

Eligible Sellers shall be paid based upon the Eligible Seller's interconnection with Company's distribution or transmission system for all energy delivered to Company's system as registered or computed from Company's metering facilities. The Energy and Capacity Credit provided herein is based on a contract term of ten (10) years.

	Fixed Long-Term Rate (10 years) Interconnected to Distribution	Fixed Long-Term Rate (10 years) Interconnected to Transmission
Energy Credits (¢/kWh)[1]:		
On-peak kWh:		
a. Summer		
1. Morning Hours	2.25	2.19
2. Afternoon/Evening Hours	3.21	3.11
b. Winter		
1. Morning Hours	3.47	3.38
2. Evening Hours	3.33	3.25
c. Premium Peak		
1. Summer	3.54	3.42
2. Winter	3.88	3.75
d. Shoulder		
1. Morning/Evening Hours	1.97	1.93
2. Midday Hours	1.90	1.86
Off-peak kWh:		
a. Summer	2.69	2.64
b. Winter	2.96	2.90
c. Shoulder	3.12	3.08

Capacity Credits (¢/kWh)[2]:

On-peak kWh:		
a. Summer	4.25	4.13
b. Winter		
1. Morning Hours	5.08	4.94
2. Evening Hours	1.69	1.65

[1] For Energy Credit purposes, Summer months are defined as calendar months June through September, Winter months are defined as calendar months December through February, and Shoulder months are defined as March through May and October through November. Summer on-peak hours shall be Monday through Friday with morning hours from 7:00 a.m. to 12:00 p.m. noon, plus afternoon/evening hours from 12:00 p.m. noon to 4:00 p.m. and 8:00 p.m. to 10:00 p.m. Winter on-peak hours shall be Monday through Friday with morning hours from 5:00 a.m. to 6:00 a.m. and 9:00 a.m. to 10:00 a.m., plus evening hours from 5:00 p.m. to 10:00 p.m. Shoulder on-peak hours shall be Monday through Friday with morning hours from 6:00 a.m. to

10:00 a.m. and evening hours from 4:00 p.m. to 11:00 p.m. Shoulder midday hours shall be Monday through Friday from 10:00 a.m. to 4:00 p.m. Summer premium peak hours shall be Monday through Friday from 4:00 p.m. to 8:00 p.m. Winter premium peak hours shall be Monday through Friday from 6:00 a.m. to 9:00 a.m. There are no premium peak hours for Shoulder months. All other hours, plus the following holidays, shall be off-peak: New Year's Day, Good Friday, Memorial Day, Independence Day, Labor Day, Thanksgiving Day and the day after, and Christmas Day.

[2] Capacity Credit shall only be applicable in Summer months defined as the calendar months of July and August and Winter months defined as calendar months of December through March. Summer on-peak hours shall be 4:00 p.m. to 8:00 p.m. during all Summer days. During Winter months, the morning on-peak hours shall be all Winter days from 6:00 a.m. to 9:00 a.m. and evening on-peak hours shall be all Winter days from 6:00 p.m. to 9:00 p.m. Capacity credits are not applicable in all other months.

RENEWABLE ENERGY CREDITS

The sale of power under this Schedule does not convey to Company the right to renewable energy credits (RECs) or green tags associated with the energy delivered.

POWER FACTOR CORRECTION

For distribution-connected Eligible Sellers, unless the Eligible Seller is required by an Operating Agreement to adjust VAR production to support voltage control, when the Eligible Seller consumes VARs supplied by Company or the Eligible Seller delivers VARs to Company, Company may reduce the purchased energy measured in kilowatt-hours for that month by multiplying by the Average Consumed Power Factor. The Average Consumed Power Factor shall be the calculated on a monthly basis as the average kWh divided the average kVAh, where average kVAh shall be the square root of the sum of the average kWh squared plus the average consumed and delivered kVARh squared.

Duke Energy Carolinas, LLC and Duke Energy Progress, LLC
Keen Direct Exhibit 2

Attachment 21

LS Power December 4, 2020 Email Request for Interim As-Available Rate Agreement to Become Effective January 1, 2021

From:	Robert Dewechter <RDewechter@lspower.com>
Sent:	Friday, December 4, 2020 12:54 PM
To:	Keen, Michael T
Subject:	RE: [EXTERNAL] Cherokee Cogen

Mike-
Thank you for the call just now. As discussed, please consider this email as a request for an As-Available Agreement to be developed between Duke Energy and Cherokee County Cogeneration Partners, LLC.
I look forward to receiving the Agreement as soon as possible so we can turn it around and get it in place before the holidays.

Also, appreciate your help with the gas meter situation and look forward to hearing back from your gas group as soon as possible. Thank you.

From: Keen, Michael T <Michael.Keen@duke-energy.com>
Sent: Friday, December 4, 2020 10:18 AM
To: Robert Dewechter <RDewechter@lspower.com>
Subject: *ext* RE: [EXTERNAL] Cherokee Cogen

Robert – please give me a call.

Michael Keen
Business Development Manager
Duke Energy
Office 727.820.4500
Mobile 727.424.2665

From: Robert Dewechter <RDewechter@lspower.com>
Sent: Thursday, December 3, 2020 5:01 PM
To: Keen, Michael T <Michael.Keen@duke-energy.com>
Subject: [EXTERNAL] Cherokee Cogen

***** CAUTION! EXTERNAL SENDER *** STOP & THINK!** Do you know and trust this sender? Were you expecting this email? Are grammar and spelling correct? Does the content make sense? If suspicious, then do not click links, open attachments or enter your ID or password.

Michael-
I'm reaching out to you as the Duke Operating Committee Member for Cherokee Cogen. I am trying to get the Short-Term Form of PPA that would be used for Cherokee Cogen power sales as of 1/1/21.
Would you be able to provide this or help me out with where I can obtain it? Thank you.